

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

May 27, 1999

The regular meeting of the Metropolitan Area Planning Commission was held on May 27, 1999 at 1:15 p.m. in the Planning Department Conference Room, 10th Floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Bill Johnson, Chair; Larry Consolver; John C. Frye (late arrival); George Fulp (late arrival); Frank Garofalo (late arrival); Mike Haggard; Richard Lopez (late arrival); Harley Miles; Osborne-Howes; George Platt; Ray Warren; and Deanna Wheeler (late arrival). Bud Hentzen and John W. McKay, Jr., were not present. Staff members present were Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Joe Lang, Senior Assistant City Attorney; Keith Gooch, Senior Planner; Donna Goltry, Senior Planner; and Karen Wolf, Recording Secretary.

1. Discussion on proposed amendments to Unified Zoning Code

JOHNSON " We will have a discussion on the proposed amendments to the Unified Zoning Code. Marvin has some additional information to present."

KROUT "Right. First of all, I wanted to mention that we had sent this information to the Boards of Zoning Appeals, and I think Bickley Foster was here last time from the Board of Zoning Appeals and made some comments. The board had its regular meeting this past Tuesday and they talked about this issue. First of all, we clarified that the provision that talked about being able to do modifications of setbacks and height and other development standards was only as part of CUPs, where the Planning Commission would have some other reason for a public hearings.

In fact, at the last meeting, I had read the clarification that Joe Lang had suggested to you about that, but we had clarified that for the Board of Zoning Appeals. There was a concern that maybe we were giving the Planning Commission all of the responsibility for all variances in the Zoning Code. That wasn't the intent. The Board did get into a discussion then, about the fact that their caseload has been reduced, and we got into a conversation about the fact that the County Board of Zoning Appeals have even less of a load, and there are meetings that get cancelled because there are no cases. One of the things that we have talked about is consolidating the City Board of Zoning Appeals and the County of Zoning Appeals, so you would have a City/County BZA like a City/County Planning Commission. We have a Unified Zoning Code, after all, that they can both look at.

There seems to be interest in that, but relating to that, we said that we would certainly not want to create another 14 member board if we could avoid it. You

know the reasons why as well as I do. But we haven't been able to figure out yet a way to come up with appointing members to a joint-Board of Zoning Appeals where we could have less than 14 members. But the City BZA passed a motion, asking us to explore that possibility with the County Board of Zoning Appeals and with the governing bodies, so we will be doing that and will be exploring that idea of membership as we go through that process.

The other thing is that we also realize that we had not sent notices to the 19 small cities in Sedgwick County of the proposed zoning amendments. Dale faxed a lot of that information, as well as he was able to, early this week. We have a representative here from Cheney here this afternoon to speak to you, and Clearwater did express that they didn't have enough time to review this and to be able to comment, so I guess I would ask you to open the hearing to give other people an opportunity to speak on this issue and then keep the hearing open and see if, two weeks from now, maybe Clearwater or someone else has other comments. I see Joe wants to make a comment here."

JOE LANG, Law Department "I don't think you have a quorum for opening a hearing."

KROUT "Oh, okay."

LANG "You can have an informal discussion, but you can't open a hearing yet."

MILES "Marvin, how many BZA cases do you have between the City and County per year?"

KROUT "These days, we are down on the City side to maybe 30 cases per year. Dale, is that about what you would say?"

MILLER "That would be about right."

KROUT "And the County BZA is less than 10 cases per year."

MILLER "Yes . There were 7 last year, one the year before and I think 0 the year before that."

MILES "So you are talking about like 40 cases and you have to appoint 14 people to meet once per month?"

KROUT "No, we are suggesting that we need to try to find a way to appoint fewer than 14 people to do it. At one time, I had in my mind

that maybe the Planning Commission could take on all of the responsibility of the Board of Zoning Appeals, and we talked about that. But your hearings are already so long, and you are going to be asked, in the future, about the possibility of going to evening meetings. So I don't know that you could take on any more responsibility."

WARREN "Who was responsible for that?"

KROUT "It was recommended by the Citizen Involvement Task Force that the City Council appointed. The City Council is now talking about what to do with that report. We need to bring that report to you so that you can see what was in it."

HAGGAR "Is there any legal requirement to keep or get rid of the BZA? IS the BZA something that is nice to have or is it just something that happens across the Country?"

KROUT "Every jurisdiction has to have a Board of Zoning Appeals. The Planning Commission can act as a Board of Zoning Appeals, but we have to have one. Increasingly, what we have seen on the City side, part of being in a litigious society, is a lot of people questioning administrative interpretations that the Zoning Administrator has made, on what kind of use this or that is, or how to calculate the height, or sometimes the language isn't absolutely clear in the Code."

HAGGAR "So the public part of that is kind of a requirement; is it just a matter of where you have it, is it with them or by itself."

KROUT "It is in the statutes that you have to have one to deal with appeals and variances."

WARREN "Does that statute provide for how many have to serve on that board?"

KROUT "No."

WARREN "So it could be a seven member board?"

KROUT "It could be."

OSBORNE-HOWES "I just want to make a comment, once again, for the record. One of the reasons that our meetings are growing longer is because we are doing some of the things that the Board of Zoning Appeals do. I commented back then that I thought that they were better able to deal with some of these things than we are. Another alternative is to go back the way it was."

KROUT "Or to take some of the items that are about Conditional Uses and return them to one or both boards."

OSBORNE-HOWES "Having served on the Board of Zoning Appeals before, I know that they took much more time with some of the issues that we simply don't have the time to take. I just think it is a better designed group to deal with some of those issues."

Fulp arrived at the meeting at 1:25 p.m.

KROUT "That is something we can discuss in more of a workshop or retreat setting next month."

JOHNSON "Now that we have a quorum, we need to make a motion to open up the hearing."

MOTION: That the hearing be reopened.

PLATT moved, **OSBORNE-HOWES** seconded the motion, and it carried unanimously (8-0).

JOHNSON "Is there anyone to speak on this issue? I know there is someone from Cheney is here to speak."

CAROL BLOODWORTH "I am the City Administrator at Cheney. We at Cheney really didn't know what your action might be today when we got our notice on Monday, but we have some real concerns about these changes in the Zoning Regulations within our three mile planning area.

First, and probably the most troublesome is the one where the cluster development would allow smaller lots with lagoons systems. We had 8 inches of rain in Cheney this month. Does anybody know what 8 inches of rain does to your lagoon system? This kind of development is very likely to happen just across the city limits line of smaller communities. I visited in the last three days with 9 of the other small cities who also have concerns about this kind of development in an area that will soon be annexed.

We don't want to be creating more problems with newly annexed territory than we would have had without this kind of development. The proposal for Conditional Use and variance changes is also a bit of a problem. The tractor-trailer type rigs are not allowed to be parked within the City of Cheney on your private property. The area directly across the street, which is currently being developed under this would be allowed to have that as a Conditional Use on the 5 acre lot. What happens with those kind of conditional uses, this time next year when that portion is annexed? We really thought some of these problems were solved when we looked at 20 acres for platting

purposes and what we would really like to see is the 40 acre rule that we have in the other counties that completely surround Sedgwick County; Harvey County, Butler County, Kingman County. They have the 40 acre rule as far as platting is concerned.

These subdivisions that are happening on our city limits of the five-acre type, don't require city-type streets. Our subdivision regulations don't extend past our city limits, so we really need to have some protection in that three mile area from development, which is not consistent with future city growth. The occupations that area allowed and the changes in the rural occupations ought to be looked at carefully when it is contained within that three mile area surrounding a smaller community. It is likely to be annexed within the next few years.

We see a lot of development. I really don't want to see it. They say 'well, so and so across here can do it, and now I can't. I was in the city first'. That is one of those things we really don't like to see. There are a lot more issues and we would really like to have more time to have the Planning Commission look at it and to make some alternate suggestions that might work well for both the developers who want to do these kinds of development and for the communities which they affect."

Wheeler arrived at 1:33 p.m.

JOHNSON "Are there any questions?"

WARREN "We are looking at a number of plats now whereby a vehicle is being provided for further subdivision of these 5 and 10-acre tracts. I am out in the southeast part of the County, and it looks attractive to us because we are running into these 10-acre and 5-acre tracts, trying to get across them or through them to more subdivision land. What do you think of these tracts whereby we have provided that vehicle so we can further subdivide and we have provided already for easements for roads, for dedications, we have provided for utilities, like it was going to be a city development."

BLOODWORTH "If you actually had utilities and didn't have a septic or lagoon system, these things make a whole lot more sense, but a numbr of people in Cheney right now have Artesian wells in their basements because they had wells in the basement and the water table is a such high level right now that the wells are artesian.

We have a lot of drainage problems. I think we need to look at, on a county-wide basis on those kind of things, how those developments affect the drainage plans. I know each plat is supposed to hav a drainage plan, but the drainage plan and 10 years later don't necessarily compute.

I personally would like to see 5 and 10 acre tracts go the way of the horse and buggy. I think they are uneconomical both for the county and for cities. You can't provide utilities economically for them. We have a lot of those out in the Cheney area. Most of them up and down a river. Do you know what happens to rivers when septic systems fail? We are just getting into new regulations on total maximum daily loads that are going to be allowed in our rivers. The EPA is being sued for not having enforced that. Septic systems and lagoons that are not functioning properly have a major effect on the total maximum daily loads that our rivers carry. I think we need to really think proactively, twenty years from now. There is marvelous farm ground out there. I think even the farm community is looking at this differently than they did 7 or 8 years ago, as far as development is out in the rural area. I really think we need to take a good, long look at ways to control that.

Cheney services 5-1/2 townships in three counties and their fire district. The growth in those 5-1/2 townships has been phenominal, but it is very expensive and very hard to provide adequate protection for that large of an area. We have a lot of things that we are planning for and we really need to plan well."

WARREN "What I think I am hearing from you then, is that you are an advocate of no more development in the County in 5 and 10 acre tracts. Is that what I am hearing?"

BLOODWORTH "I think you have to be real careful about what services are being demanded and what could actually be prepared for them. An interesting item. We had just finished having our annual Town Hall meeting on the 19th of April. I finished doing the data base on the people who attended the meeting in Cheney. Forty per cent of the people who attended that meeting did not live in Cheney. These are folks who have moved out into that area looking for connections as far as services and would love for us to build a lot of things in Cheney for their benefit. They have just unrealistic expectations. I think we need to really look at what we are doing and whether it makes economic sense to anybody."

JOHNSON "Are there any other questions? Thank you. Is there anyone else who would like to speak on this item? Seeing none, I will bring it back to the Commission."

CONSOLVER "Marvin, in the comments that were just made, there was something that caught my eye. We are passing this, it is for the entire county and affects all of the areas around the smaller communities. Now we go back to the three mile. Do the smaller communities still have, in their Planning Commissions, any override on any of these within that three mile area? I know we do it out of courtesy sometimes, but is there any protection to them?"

KROUT "Let me separate out the issues. On the issue of going to the possibility of a Conditional Use for a tractor/trailer that is parked on a 5 acre lot. The counties have their Zoning Areas of Influence, so those Conditional Uses, if it is within 3 miles, will have to be sent to

the City of Cheney if it is near Cheney, and the Cheney Planning Commission will review that at a public hearing. And just like any other zoning case or Conditional Use, if the Cheney Planning Commission recommends against that Conditional Use, then even if the Planning Commission approves it, it has to go all the way to the County Commission, and the County Commission would have to override it by a unanimous vote to approve that Conditional Use. So in the case of that tractor/trailer issue, Cheney still does have some official influence through that voting procedure.

On the platting questions, and I would agree with the statement that we probably don't need any 5 or 10 acre lots on the doorstep of these communities, but what we did do was to make a change last year in the Subdivision Regulations, so that if it is going to be in 5 acre lots on the doorstep of Cheney, it does have to go through platting requirements. Even though we don't say what the standards have to be within 3 miles of Cheney, we do send all plats that are within 3 miles of Cheney to Cheney, and Cheney has the opportunity, then, to make recommendations to the Subdivision Committee on what should be the standards for that subdivision. If Cheney feels that it is within their growth area, and it is an area where they someday want to plan for the extension of future water and sewer, they can do the same sorts of things that we are doing with some of our southeast plats, in terms of creating the opportunity for future smaller lot development when they extend their water and sewer. So they can protect, to some extent, their ability to grow through those areas, by requiring that same kind of subdivision at the edge of their community. But that would be up to them to participate in that process."

HAGGAR "Just an observation. I think the person from Cheney kind of spoke about this subject, but as I recollect, in the last two or three years, as we reach out to these small communities, to get similar input, I think, unless my brain is failing me, you hear the same theme over and over again. But any time we are trying to make some plan or something, everybody wants it to be market-driven and we are against this and against that, but it looks like the folks in these outlying areas really want to control growth. It is really affecting their economic way of life. Did you get the same input the last time you went around with this growth and new growth?"

KROUT "Well, I think that some of those communities have concerns about 5 acre lots around the edges of their communities. Yes, I have heard that from a number of their communities, and also that they would like to continue to have more say about the areas, even if they don't plan to go out to them with water and sewer, they affect the image of their community, so they are concerned about how those areas are going to develop and they would like to have more say than they do now."

HAGGAR "In the meetings I attended with the Mayors once a month, almost each one of them has a lot of concern about the things that are happening in the small cities, and they don't know how in the hell they are going to deal with that."

JOHNSON "What is the pleasure of the Commission?"

MILES "Marvin, you don't want to close this hearing, do you?"

KROUT "No. Is there anyone else to speak on this afternoon? I guess we would like you to continue the hearings to give the other small communities the opportunity to review it and comment on at the next meeting."

MOTION: That the hearing be continued until the next meeting.

MILES moved, **FULP** seconded the motion, and it carried unanimously (12-0).

WARREN "Marvin, has there been any modifications to this proposal as it was originally presented to us?"

KROUT "Two weeks ago, I did read into the record at that hearing, some minor modifications. Before the next meeting, we will send out a revised copy for you."

WARREN "And it will be in complete form?"

KROUT "Right. It will be just like this, except we will show you a second layer of revisions."

Lopez and Frye arrived at the meeting at 1:45 p.m.

2. Subdivision

2/1. V-2174 – David Chaffin requests the vacation of an access control described as:

Lot 11, Block 2, Horseshoe Lake Addition.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time May 4, 1999, which was at least 20 days prior to this public hearing.

2. That no private rights will be injured or endangered by the vacation of the above-described street right-of-way, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a street right-of-way described in the petition should be approved, subject to the following conditions:
- A. The applicant shall submit an administrative adjustment to the CUP to remove the right turn only language from the CUP (staff will request that the street yard landscaping along 21st Street be double the minimum requirements to compensate for the lost medial landscaping).
 - B. The applicant shall design and construct the left turn lane along 21st Street North and also the deceleration lane as approved by the County Engineer.
 - C. The applicant shall guarantee that the modified medial will be reconstructed with new plantings and/or decorative brick surface, according to a plan submitted to and approved by the Planning Director.
 - D. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.

GOOCH "There was a page inadvertently left off of your staff report that is being handed out right now. It has the conditions on it that was approved by the Subdivision Committee on this vacation request.

The applicant is requesting to vacate access control to allow for left-turn movements from this property, located along 21st Street, shown here. Currently, the plat limits this lot to right-turn only, as does the CUP. The applicant is proposing to construct a new building for the Player's Sports Bar. A cross-lot access agreement was recorded between this lot and the lot to the west. Back when this property was platted, the lot to the west is also permitted one right-turn only, as you can see right here. It was developed by a bank. It has access to Northshore Boulevard, which is permitted full turns to 21st Street. It is allowed to go left or right on 21st Street.

Due to the cross-lot access agreement, patrons to Lot 11, which is the Player's Sports Bar will be able to make left turns onto Northshore Boulevard and then make their way to Players across the bank's property. Twenty-first Street North pavement at Northshore Boulevard and also over here (indicating) is wide enough, based on engineering standards to make U-turns and therefore people could possibly make a U-turn to either go east or west from this location. If the median break is permitted, it will remove most of the median landscaping, located adjacent to this site, approximately right here (indicating).

This request was approved last week by the Subdivision Committee based on the conditions that were recently handed to you. These are A,B,C and D. Staff is still recommending that 'B' be removed, which the applicant showed as a design, and construct the left-turn lane along 21st Street North and also the deceleration lane is approved by the County Engineer. I recently talked to Mark Borst about this request, and he was in agreement with Randy Hoskins, the City Engineer on conditions on this applicant, which were available to the Subdivision Committee, and they voted to remove this condition and allow the County Engineer and the applicant to work this out. Mark Borst was in agreement with Randy Hoskins' conditions which state that 'the applicant shall design this median break for expected speeds and traffic volumes. There should be a 120 foot long taper followed by 400 feet of deceleration length, with an additional 50 feet for storage. On the north side of the road in the driveway, there shall be a 40-foot throat before any turning movements are encountered'.

The County is currently looking at reducing the speed from 50 to 40 miles per hour. Mark Borst told me about 30 minutes ago that that was probably a ways away. They have not gone to the County Commission yet to reduce that speed. So he was in agreement with these conditions that will be put on the applicant. Also, that the opening should be located in the eastern third of the lot. Therefore there is a maintained separation between Northshore Boulevard as well as the opening to the east and this opening.

Staff is recommending that 'B' be removed and be replaced by 'C' that was recommended by Subdivision, which was the 400 feet length of deceleration lane with an additional 50 feet for storage. If you remember back to the Subdivision Committee meeting, those of you that are on there, Randy Hoskins did write a memo to everybody asking that certain conditions to be placed on the applicant. The Subdivision Committee chose to take that out and let the applicant and the County Engineer work it out. The improvements that Randy and Mark were in agreement with were that there should be 120 foot long taper, followed by 400 feet of deceleration length, with an additional 50 feet for storage on the north side of the roadway, in the drive-way, there shall be a 40 foot throat before any turning movements are encountered. That is what the Planning staff is recommending be placed on the applicant. Are there any questions of staff?"

KROUT "What about the covenant?"

GOOCH "There would also be a covenant that the applicant would sign that would simply state that in the future if there does become a hazard at this location, that the City or the County, whichever 21st Street is in, they could come back and put a median in there to make that only right turns again."

WARREN "Would that be available, though, to the County, because I think the condition of our approval was that they had to satisfy County requirements, and I think what you are saying is that this is what the County would like to have."

GOOCH "I talked to Mark Borst earlier today, and that is what he said."

WARREN "So we don't have to put it in here. If what we said..."

GOOCH "I think staff would like to have it put in here."

WARREN "In other words, you don't trust him that he might do that. Because he has that right."

GOOCH "I wouldn't say didn't trust."

KROUT "Also, this is a City case, and the City Council has to approve a vacation. The covenant needs to be filed in some manner, and it seems like the best way for it to be filed is along with a City vacation case. It makes sense for us to assure, like we do with guarantees in other cases that any instruments or guarantees are filed as part of the case."

MILES "I would like to hear from the applicant."

JOHNSON "Are there any other questions of staff?"

LOPEZ "Keith, if I understand you correctly, this language that you are proposing is in concurrence with the County's language right now, even though we have nothing in writing for the record?"

GOOCH "Correct. I talked to Mark Borst at 1:00, and he said that he was okay with Randy Hoskins' conditions that would be placed on the applicant, which were removed by the Subdivision Committee."

LOPEZ "Okay."

KROUT "Both the City and the County Engineering offices have said that they can live with this left-turn opening, but I think that it would make good planning, and it is the sort of thing you would normally do with any other vacation case to try to do a couple of things here. I don't think we need to talk about the design of the medial. I think that will be the County's specification, and it already says to the specifications of the County."

But I think that identifying that the opening will be at the eastern third of the lot clarifies where it has to be located. That is going to set the first design parameter, and I think that is important. You often do set where you will and won't allow access. The issue of the covenant is also something that I think ought to be done as part of this case, like you would for any other guarantee or instrument. We are not arguing now with you about whether or not there should be a left-turn opening, but we are recommending that the location of the opening be set, and that the covenant be filed. The covenant is something that would go to a future owner of a future use, which may not be a restaurant, that says that it just lets that future owner understand that the City or the County does have the right to close that medial some day in the future."

HAGGAR "But Marvin, I am not privy to the other meetings, but the paper here says that the reason for the request is to allow left turns. That is the issue, isn't it, or is it?"

KROUT "Right. Right now, the access control of this lot, which is in the City limits says that they can only have right-turn in and right-turn out."

HAGGAR "Right. So I am saying that this stuff in front of us is to allow or not to allow, left turns. Then you are bringing in all of the other stories. I don't understand that part."

KROUT "It is not unusual for us to recommend approval subject to conditions. That is all this is."

JOHNSON "Are there any other questions of staff? Applicant or agent?"

GREG FERRIS "Mr. Chair, members of the Planning Commission. I represent Player's Sports Bar. The applicant is here if you have any specific questions for him, he will be glad to answer those. Also, a representative of Mid-Kansas Engineering is also here if you have some specific engineering questions."

We believe that the Subdivision's recommendations are entirely correct and accurate. I think that Mr. Warren pointed out that this certainly is in the County, and if the County does indeed, and I only have that now second handed, agree with these recommendations, and that is what they want, it is irrelevant what I think, or what you think, or what anybody else thinks. This road is in the County. It is a unique case, in that the road is in the County and the plat is in the City, but the road will be designed to the County's specifications. Period. It is totally irrelevant what anybody else wants. What the County Engineer and his folks that are going to advise him recommend are exactly how it is going to be. Where the opening occurs on the plat will also be determined by the County Engineer, even though it is

a City plat because wherever he determines is the most reasonable and feasible place to put the left turn is where the opening must be, or my applicant will not have any ability to make left turns into that.

So with that, I would say that you should just follow the guidelines that the Subdivision gave. And I would remind you that Randy, while you have the Planning Staff telling you what Randy wants, Randy, the Traffic Engineer for the City, at Subdivision, voted in favor of their recommendations. So there was only one no vote to my knowledge, and that was Mr. Platt, who voted against this in Subdivision. So Randy did make many statements, but when it came to time for him to vote on what he was in favor of, he voted in favor of the Subdivision's recommendations. So I think that Subdivision heard this and recommended this; I think it is reasonable, and certainly it doesn't make any sense for us to be able to stand up here and try to design this road for the County because the engineers that work for Mr. Chaffin are going to design this in conjunction with the County, which is exactly what was recommended.

Finally, the last thing that I think needs to be said is in regard to the covenants that they would like to be signed. Mr. Lang can correct me if I am wrong, this is unnecessary. It would be necessary if you are asking the applicant to pay for it, because that would be the normal kinds of things that I think Mr. Krout is referring to, but all this says is that we recognize that if some day they want to close this, they can.

If the County or the City wants to close this medial for safety reasons, they can use their police powers to close this medial. They do not need a separate instrument to close this, and if it is done because of safety, there is no recourse by the applicant. However, if the City or the County just decided some day that they wanted to take that access control away and it was not based on sound traffic or sound safety principles, there would be recourse, and that is why my applicant would not want to sign this. If there is a safety reason, obviously it is going to be closed anyway, unnecessarily. If it is not closed, I think you are asking him to sign away something that the City Council or the Planning Commission are going to recommend, and if you don't recommend the access, then that is a different issue.

So we believe that when Subdivision heard this case, they looked at all of the information, they had Randy there to express his opinions, and Randy voted in favor of the Subdivision's recommendations. I would be glad to answer any questions."

FRYE "I would like to clear up something, Mr. Ferris. Randy doesn't vote. So he did not vote."

FERRIS "Oh, I see. I apologize."

KROUT "I want to clarify that the purpose of this covenant isn't to take away anything that the property owner does or doesn't have, it is just to provide an acknowledgement, and the purpose of it is to file it so that it would go with the land and that future owners would understand, especially in a situation like this where you have an existing medial that has been opened, that it might be closed again. It is a practical matter, and I am sure Councilmember Ferris has had these sort of situations come before him, that if someday we need to close that medial, for example, and the future City Council or County Commission can point to the fact that an instrument has been filed and it is recorded, and some future owner, then, can't say they didn't know anything about that. He won't be able to say that he didn't know he wasn't always going to have the left-turn opening. And while the City or the County always has the right to close the medial, I think, in the name of safety, it is certainly, from a political standpoint, much easier to have informed the owners of the property that that is a possibility to happen. It would make it much easier to take that action."

FERRIS "Yes, indeed, that is accurate in that they can have that instrument, but any City Council, at least in the 12 years I saw with them, if there was a safety issue, and I am sure that the County Commission feels the same way, if it is a safety issue, those are the easiest things in the world, and there are very non-political. While I agree with you that some future owner may not be able to say they didn't know, I certainly believe that that is the rule of the land. That is the law of the land. The Supreme Court has ruled that those are available to cities. Am I wrong in that, Mr. Lang, or is that correct?"

JOE LANG "Mr. Ferris is correct on the statement. The City and the County certainly have the right to exercise that police power. It comes to be an issue though, sometimes a landowner doesn't agree with that right and challenges it, and you get into either political disputes or litigation, but the right is certainly there to do it. You have a situation here, however, where in the future they may be taking away someone's partial access and the access of left turns, which has happened many times throughout this community, as you are aware. But it frequently turns into a dispute, even though they have the right to do that."

WARREN "I totally agree with you, Greg concerning that document. Of course, I have been opposed to that document since the first day I saw it because I think there are ample powers under health, safety and welfare that they could take care of that."

The second thing is, you pointed out to the Planning Commission, something that I think ought to be reiterated, and I would ask you to. That is that this is a pretty permanent use. This fellow has been in business for some time at his other location, and his hours that he is going to be using those accesses, I thought, was important. Would you go over that?"

FERRIS "One of the things that disturbed me in the letter that Randy wrote, and I have since talked to Mr. Lindebak, who is his boss, that letter was written with not full information. First of all, the County does intend to lower that speed limit. My understanding from Mr. Spears, who will do that, is that they plan to do it very soon, and the representative from the County, who is here said they planned to do it fairly soon. So any information to that is new information, and while they may not have the Ordinance prepared, this building will not be completed until September, so while it may not be in the near future that they are going to do this, I would suspect that they are going to do it by September. At least that is my information, so first and foremost that, and they based their information on that."

Second, the turning movements into this are going to be off-peak. While there are 15,000 cars per day that use this road, and soon it will probably be 25,000, this is a very unique road in that the majority of the traffic on this road is peak traffic. If you go out on this road in non-peak times, it is very, very desolate. It becomes much like a County road. The time that my applicant is going to be in business here, his business is off-peak business. It is noon and it is evening business. So the conflicts that were recognized by just the traffic count and the left-turn, and the 50 mile per hour speed limit, were not accurate, and Mr. Lindebak told me that they do not have any problem with that, and that his position is that they have no problem with it. Not only do they not want to get involved in the City and County and all of those things, but that he didn't personally have any problem with this left turn."

JOHNSON "Are there any other questions? Is there anyone else to speak in favor of this item? Is there anyone to speak in opposition? Seeing none, I will bring it back to the Commission."

FULP "I guess this might be a small example of why sometimes our meetings run long. I am a little confused here on detail. First of all, I have a point of order question of our attorney. I have a question as to whether or not, since we just received page 3 of the staff report today, although the Subdivision Committee has reviewed it and made their recommendations, terms of the Planning Commission public hearing on this item, if there was proper public Commission notice. Can we legitimately even discuss this item today?"

WARREN "We had all of this available to us at Subdivision."

LANG "The agenda that went out said that the item was recommended for approval. I think you have had some detailed clarification, but it is my understanding that it is not a major substantial change or reversal, but more for clarification."

FULP "So we are okay to discuss it as a whole body?"

LANG "Yes."

FULP "Okay. Because this item is coming to us incomplete with last minute details not worked out, and obviously some differences between the applicant and the County Engineer and the City Engineer and staff, and since the applicant's representative mentioned that he is not even thinking of opening until sometime in September, perhaps we should consider deferring this for a couple of weeks to give staff and the applicant and the City Engineer time to work out the details and bring it back to us so that we can look at a complete pie rather than pieces?"

KROUT "If he is planning to open in September, I assume he wants that left-turn opening before September, so I do hope that you move this on today in some manner. If there has to be more discussion between now and the City Council, because this has to go to the City Council, then we can try to have that discussion on the way to the City Council."

OSBORNE-HOWES "I have a questions, Marvin. I know that 21st Street is a major arterial, and you have talked about plantings and medians, and that this is kind of a gateway, and this is going to be the 'Rock Road' of the future in some way. I hate to use the words Rock Road, because I hope not, but this is going to be well trafficked all times of the day. I guess I am thinking of all of the restaurants that are opening along there. I am already discovering that it is pretty crowded at the noon hour on 21st Street, so I can only imagine 3 years from now what it is going to be, so I have a couple of questions."

One is, while this is a County Road, isn't this a City/County cooperation somewhere along here that created the median and the plan for 21st Street in the first place?" And then, my second question is, why are we even debating whether there should be a left-turn lane now, when we have all talked about how we want to limit the cross-overs, or limit the left-turns? Why are we even debating this, saying this is okay now?"

KROUT "This is probably a conversation we should have, not on one case, but in a workshop session with the City Engineer and the County Engineer."

OSBORNE-HOWES "It is just that it impacts my vote."

KROUT "In answer to your question, this will be, as the applicant's agent said, there will be a substantial amount of more traffic in this area in the future. I think there will be. It is also in the Comprehensive Plan, it is identified as a special corridor, and it was identified for a special beautification and enhancement, and I think the County was responsible for the enhancement that has occurred on this segment of the road and further to the west, the City has had the responsible. It is an unusual situation. Do the City and County cooperate? Yes, I think they are cooperating on this issue, although I think it is kind of a no-man's land that has been created here because the County is responsible for the right-of-way, and the City is responsible for the access opening and the access control. They obviously have to work together on it."

I think you also have to take into consideration that this may not always be a Player's, although it may be a Player's for a long time, but it is Limited Commercial zoning. When the Planning Staff looked at it, and in the context of that workshop that you had with Dr. Stover a number of weeks ago, we said to ourselves that this was from both an aesthetic and safety standpoint not the place to break an opening. And that there are opportunities to make left turns along here because the road is wider as opposed to some other streets that are narrower and so it didn't seem to be necessary to break this opening, which is tree lined and is across from the County's park and all of that."

But I can't stand here and say that the Planning staff is opposed to closing a medial when both of the Director of the County Public Works and the City's engineer are both saying that they don't have a problem with this. But I will say that if it is going to be approved, it should be approved, subject to specifying the general location of that opening and subject to approval, including planning approval of the medial treatment, so that there are some aesthetics left to what is left of the medial after the opening, and also, I think that in this particular case, where there is a concern about is this always going to be there as an opening in the future, that it would be a good move for the City, politically, to have this covenant on file."

MILES "You can go a quarter of a mile and make a total U-turn either way from this. A U-turn really, to me is more of a traffic problem than a left-turn out of this property. I really think that is the reason we went that way. As we were told, if the traffic gets too high out there, they will close it, so all of the tools were there to do it. We are doing it right now because the traffic count is not too high. If it gets too high, it is going to close. The man has to know it.

If you want to put a certain spot that he is going to be able to have a opening, I don't have a problem with that, but let's just do something and get on with it."

WARREN "I would like to ask the applicant or his agent whether or not these restrictions that have been suggested by staff and by the City Engineer are going to be highly restrictive to you, or can you live with those recommendations?"

DAVE CHAFFIN "I own Player's Sports Bar. Some of the conditions are acceptable and some aren't. I have been working closely with the Coe's over there. I am part of the homeowners' association. I have had several meetings with them, and obviously they are concerned with what I am opening up there, and I want to be a good neighbor. One of the things they were concerned with is my neon sign, which every restaurant must have. They don't like any signs on the building, so I gave them that. They also did not want a neon sign on a pole like I have now, so we compromised so I could have my neon sign on an island median, or a monument sign. They were concerned where this sign was located, so I originally put the entrance so the building would block the homeowners, so obviously they would have no undue lights shining on their property.

Moving the entrance to 1/3 of their property not only does not center the business properly, it just...I have been a restaurateur for a long time, and I notice what other people do, and I have gone to seminars and everything else, but signs are put on property for a purpose. If you will notice, it is always centered in some way. They want to draw attention to the building. If you put my neon sign down to 1/3 of the building, it is basically going to illuminate the lake, or illuminate the homeowners' behind the lake and my building is going to be left dark. I have no choice but to put out the added expense and go to the homeowners' and say that that option has been taken away from me, I must put a sign on my building along with a neon sign on a monument. I don't see the benefit of it. If I truly could look at this as being beneficial to traffic, then I really wouldn't have a problem with it, but it just seems to me that I live in the area, I am down there 4 or 5 times a day, and where we have it is absolutely the best place to put it. Any kind of U-turns or anything else is going to be a pain.

If you are asking the people to U-turn on the bank side, they are going to park in the bank parking lot. Now we are discouraging this by building a wall. I don't have to do that by any restrictions, this is just between the banker and me. I am building a wall to discourage people from parking in the bank's parking lot. But if they have to U-turn, they are going to be right there and say 'let's just park here'. I know that is going to happen. I understand how the public thinks. If you U-turn it on the other end, you are going to have the homeowners' that live down there tired of the traffic. They are not going to want headlights shining in their homes, how many times a night? They are just not going to like it. They would want us to put a left-turn in so they are not travelling down to our property to get to his property. They will do it. They are going to do what they are going to do to get in there. They will break all kinds of laws to do it. At this time right now, the left-turn lane on both ways has no left turn. I don't know if it is up to the Commission to just say just take the signs down or not, but as it stands right now, it is against the law to make U-turns on 21st Street."

JOHNSON "Mr. Warren, did he answer your question? Okay. What is the pleasure of the Commission?"

HAGGAR "I would like to ask staff why this case came to us today? Is it that you want to hear the case, or the applicant didn't like the Subdivision ruling, or what? Who brought this case up?"

KROUT "The staff brought it up."

HAGGAR "It says here to allow a left-turn. Do you have something else besides that? And do you agree with a left-turn?"

KROUT "We are not going to argue with the City Engineer and the County Public Works on the left-turn."

HAGGAR "All right."

FULP "So, Marvin, if I understand you, then we are going to allow a left-hand turn here?"

KROUT "We haven't voted on that."

FULP "I am saying that the recommendation, this unwritten but verbal recommendation of staff is to allow a left-hand turn for now, but in the future, the covenant will simply put the applicant on notice that that may go away. Be aware of that. Isn't that what we are saying?"

KROUT "Yes."

FULP "So we are avoiding the U-turns by allowing the left-turn now?"

KROUT "I have to tell you that I hadn't heard the story about the sign and the discussions with the neighbors about the location of the sign, and whether or not the building would be blocking it, and whether or not that would be a problem or not. That is all new information to me. The location of the opening was the recommendation of the City Traffic Engineer, based on how much storage length he thought was needed and to try to increase the distance between that and the next opening. I guess my recommendation to you now, and I am sorry that this is as messed up as it is, but I would recommend to you now that you approve the left opening but require the covenant and leave the location to be established administratively."

MOTION: That the Planning Commission recommend to the governing body that the left turn be approved with a covenant required and the location to be established administratively.

MILES moved, **FULP** seconded the motion.

PLATT "I voted against this item in Subdivision because I think that the proper way to proceed with streets like 21st Street is to put medians down and leave them there and to restrict left-hand turns. I think that is the proper way to handle traffic in terms of moving the most amount of traffic on a street and to keep accidents to a minimum. I see no reason to break that jungle principle in terms of this particular item. On this one, though, more and more, I am beginning to think that what we have here is a use that doesn't belong there at all. We just heard the owner say, and I think I have it correctly, that the people who go to his place, are 'going to break all kinds of laws to get there'. Something is wrong here with the whole location, in terms of the way it relates to the neighborhood, the way it relates to traffic and I see no reason to put a left-hand turn in there at all."

OSBORNE-HOWES "I think, for the most part, I agree with Mr. Platt. I have a real problem with the left-hand turn lane being allowed to go in and to break that medial up. Maybe we have the City and the County staff saying that they can go along with it, but I think that that is one group at the table. That doesn't mean everyone at the table. It is pretty clear that it is not proper planning, and that this is a major corridor, that there is some idea for beautification and development, and that this goes against that. So I am going to vote against it."

JOHNSON "Is there any other discussion? Let's call for the vote."

VOTE ON THE MOTION: The motion carried with 9 votes in favor (Johnson, Wheeler, Haggard, Fulp, Warren, Consolver, Miles, Frye and Lopez) and 2 in opposition (Platt and Osborne-Howes). McKay, Garofalo and Hentzen were not present.

KROUT "These are not handled as public hearings anymore by the City Council, but we will notify the applicant when we schedule this case on the City Council agenda."

2/2. V-2175 – Duane Carpenter (Owner) requests the vacation of a portion of a street right-of-way, described as:

Beginning at the northwest corner of Lot 1, block 11, Builders Fourteenth Addition, Wichita, Sedgwick County, Kansas; thence north, 20 feet; thence east, 104.1 feet; thence south, 2 feet to the northeast corner of said Lot 1; thence west to the point of beginning. Generally located on the southeast corner of 27th Street South and Custer (3071 West 27th Street South).

GOOCH "This is a request to vacate the street right-of-way, located along 27th Street South and Custer. Currently, there is 55 feet of half street right of way on the south side of 27th Street. They are requesting to vacate the southernmost 20 feet, which would leave 35 feet of half-street right-of-way. Staff is recommending approval of this request. Are there any questions of staff?"

JOHNSON "Are there any questions? Thank you, Keith. Applicant or agent."

PHIL MEYER "I am with the Baughman Company, the agent for the applicant. I will be glad to answer any questions you might have."

FULP "Are you in agreement with all of the recommendations of staff?"

MEYER "Yes."

JOHNSON "Thank you, Phil. Is there anybody else to speak in favor of this item? Is there anyone here to speak in opposition? Seeing none, I will bring it back to the Commission. What is the pleasure?"

MOTION: That the Planning Commission recommend to the governing body that the vacation be approved, subject to staff recommendations and Subdivision Committee recommendations.

FULP moved, **WHEELER** seconded the motion, and it carried unanimously (11-0).

JOHNSON "Items 2/3 through 2/6 can be taken in a single motion."

OSBORNE-HOWES "Can I ask that item 2/4 be pulled? I have one question about it. It will be real brief."

Subdivision Committee items 2/3, 2/5, and 2/6 were approved, subject to the Subdivision Committee recommendations. **MILES** moved, **LOPEZ** seconded the motion, and it carried unanimously (11-0).

2/3. S/D 99-30 – Final Plat of CLEARIDGE ESTATES 2ND ADDITION, located south side of Pawnee, west of 143rd street East.

- A. In accordance with the Subdivision regulations (Sec.7-204(C)), the Applicant shall submit a restrictive covenant addressing the lot clustering concept utilized for this site along with the timing of the petitions for improvements.
- B. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. Health Department should comment on the feasibility of the Applicant's proposal to join the lots together by covenant for the installation of sewage lagoons. Soil testing is required. A restrictive covenant shall be provided limiting each cluster of lots to one sewage lagoon.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. The site is located within the 100-year floodplain. County Engineering needs to comment on the status of the applicant's drainage plan. An agreement with the adjoining landowners to the east is requested regarding the ownership and maintenance of the pond. The reserve along the east line of the plat shall be increased to 30 feet. A guarantee shall be submitted for drainage structures. Runoff calculations shall be submitted.
- E. County Engineering should comment on the need for any traffic improvements along Pawnee. A guarantee is required for a left and right turn bay along Pawnee.
- F. The applicant shall guarantee the installation of the interior streets to the suburban standard. The installation of a 36-ft, 6-inch thick rock surface is required, along with temporary turnarounds at the southwest line of the plat.
- G. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- H. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the appropriate governing body, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by a method similar to special assessments.
- I. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contract all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in

Topeka. Further, on all construction sites, the city of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.

- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- P. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Southwestern Bell has requested additional easements.
- Q. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat. This will be used by the City and County GIS Department.

2/5. S/D 99-35 – One-Step Final Plat of DUNCAN CORNER ADDITION, located on the southeast corner of 53rd Street North and Ridge Road.

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. County Engineering needs to comment on the access controls. The plat proposes two access openings along 53rd St. North and one access opening along Ridge Road. The plat also denotes 50 feet of complete access control along both perimeter streets from the intersection; although the Subdivision regulations require 150 feet of complete access control for 53rd St. North. 100 feet of complete access control shall be required along 53rd St. North from the intersection. One access opening along both streets is permitted.
- E. The Applicant shall guarantee the closure of any driveway openings being located in areas of complete access control or that exceed the number of allowed openings. The applicant shall reconstruct the driveway at the time of site development.
- F. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- G. To allow for County Commission approval, the County Commissioners signature block needs to be added. Bill Hancock is the only signature required.
- H. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- I. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at

established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of

Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
 - O. Perimeter closure computations shall be submitted with the final plat tracing.
 - P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
 - Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
 - R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.
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2/6. S/D 99-33 – One-Step Final Plat of BFI ADDITION, located on the northwest corner of West Street and 37th Street North.

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. Approvals from KDHE may be needed along with an NPDES permit for the holding tank.
- B. In accordance with the Conditional Use Approval, the applicant shall guarantee the future extension of municipal water and sanitary service to the site.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. County Engineering needs to comment on the status of the applicant's drainage plan. In accordance with the Conditional use approval, all runoff within the tipping facility shall drain to a holding facility and not to the storm water system. All outside runoff shall be properly controlled to prevent contamination. The drainage plan is approved subject to submission of calculations for detention. A floodway reserve needs to be platted for the detention area.
- E. County Engineering needs to comment on the access controls. The plat denotes one major opening along 37th St. North on the east side of the site and one emergency access on the west side of the site. The access controls are approved.
- F. To allow for County Commission approval, the County Commissioners signature block needs to be added. Bill Hancock is the only signature required.
- G. In accordance with Conditional Use approval, the applicant shall guarantee the following improvements to 37th St. North and West Street to an industrial standard paving thickness: southbound right turn lane on West Street at 37th Street, continuous decel lane along 37th Street North from West Street to the entrance of the transfer station, a 2-lane pavement on 37th Street from West Street to the main driveway entrance.
- H. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- I. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges

the signatures on this plat, to be printed beneath the notary's signature.

- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

Item taken out of order:

2/4. S/D 99-34 – Final Plat of WILLOWBEND NORTH ESTATES ADDITION, generally located west of Rock Road, south of 45th Street North.

- A. The Applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. A guarantee is required. The southeastern portion of the site is in a floodplain and minimum building elevations are needed; otherwise a Letter of FEMA Map Revision will be required.
- D. The applicant shall guarantee the paving of the proposed interior streets. For the narrow public 32-foot streets, this guarantee shall be for the 29-foot paving standard. For the Reserves being platted for private streets, improvements shall be guaranteed for construction to a public street standard; however as private improvements, guarantees cannot be provided through the use of petitions.
- E. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- F. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- G. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 32-foot or private 20-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- H. Since this plat proposes the platting of narrow street right-of-way with adjacent 15-foot street, drainage and utility easements; a restrictive covenant shall be submitted which calls out restrictions for lot owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- I. City Fire shall comment on the street names. Castle Pines Drive shall be revised to a "Street". Castle Pines Court shall be

revised to a "Branch".

- J. A bearing and distance for Lot 2, Block 1 needs to be added to the legal description. The bearings along the west line of the plat need to be revised to be consistent with the legal description.
- K. The Parks and Pathways Plan has indicated that a recreation corridor should be provided along the southern portion of this plat. The Applicant should contact the Planning Department's Land Use staff to discuss issues involving the dedication of public access easements. The applicant shall include a note in the plat's text that a use of Reserve D shall include public access if the adjoining railroad is included in the Park and Pathways project.
- L. The applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- M. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- N. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- R. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- U. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- V. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat. This will be used by the City and County GIS Department.

OSBORNE-HOWES "My question is just real brief. I noticed that the vote on Agenda Item 2/4 was not unanimous. I thought that we used to, if that was the case, at least when Mr. Ross was around, he always used to request that we move on them separately. I just wondered what it was about that it was not unanimous."

KROUT "Okay, who was the Subdivision member who was opposed to this item?"

MILES "I was. That puts you in a spot, doesn't it? Do you want to withdraw your statement? (Laughter here) I did it because they added an item. I made a motion to approve this, and there was a little thing added to it that I said I wouldn't approve, so then I wouldn't vote for my own motion."

PLATT "We added the provision that should the railroad be eliminated and it became a trail, that there would be a contingency dedication for access to the trail."

MILES "They wanted access to the trail and I didn't think they needed it. So, I wouldn't vote for my own motion. I enjoyed that."

JOHNSON "Are there any other questions on this? Does the applicant or agent want to say anything on it?"

JEFF CARTWRIGHT "I am with Mid-Kansas Engineering. We can agree to all of the terms that were set out and your access is there."

JOHNSON "Are there any questions of the applicant? Thank you. Is there anyone else to speak in favor of this item? Is there anyone to speak in opposition? Seeing none, what is the pleasure of the Commission."

MOTION: That the Planning Commission recommend to the governing body that the request be approved.

OSBORNE-HOWES moved, **FRYE** seconded the motion, and it carried unanimously (11-0).

ZONING:

3a. Case No. DP-126 Amendment #1 – Carriage Park Center Associates c/o Tony Utter (Owner), Cellular One c/o Bill Ames and Baughman Company c/o Russ Ewy request an amendment to Parcel 3 of the Central Avenue Plaza CUP to allow a communication tower as a permitted use; and

3b. Case No. Z-3321 – Carriage Park Center Associates c/o Tony Utter (Owner), Cellular One c/o Bill Ames and Baughman Company c/o Russ Ewy request a zone change from "LC" Limited Commercial to "GC" General Commercial, on property described as:

Lot 3, Block 2, Central Avenue Plaza Addition, an Addition to Wichita, Kansas, Sedgwick County, Kansas, described as commencing at the SW corner of said Lot 3, thence east along the south line of said Lot 3, 125.00 feet on a bearing of S 89° 53'34"E; thence north at a right angle to said south line, 68.37 feet said point being the southeast corner of existing building; thence northwesterly along said building, 3.47 feet on a bearing of N85° 32'33" W for a point of beginning; thence continuing northwesterly along said building, 68.00 feet on a bearing of N85° 32' 33" W; thence southwesterly at a right angle to said building, 25.00 feet; thence southeasterly parallel to said building 68.00 feet thence northeasterly, 25.00 feet to beginning. Generally located north of Central and east of Edgemoor.

BACKGROUND: The applicant proposes to amend Parcel 3 of the Central Avenue Plaza CUP (DP-126) to allow, as a permitted use, a 120 foot communication tower and to rezone 1,700 square feet from "LC" Limited Commercial to "GC" General Commercial. The application area is located north of Central and east of Carriage Parkway. Central Avenue Plaza has developed along a north-south axis, with two major sets of buildings facing each other, across Carriage Parkway. The tower would be located on the south end of the east row of buildings. This façade has one opening, a door, and 18 parking spaces.

The applicant has submitted a site plan, which shows two 12 by 20 foot buildings, each of which could be used by two separate carriers, and another 8 foot by 12 foot pad site for a third potential carrier. The 120-foot "monopole type" tower would be located in the middle of the site. The applicant's agent has stated there will be an eight-foot tall chain link fence constructed, which would enclose the area between the buildings. The communication tower will be constructed over eight existing parking spaces. Based on the original construction plans there will be sufficient parking still provided on Parcel 3 (26 extra spaces), even with the loss of these eight spaces. Since parking standards are not specifically listed for communication towers, the Superintendent of Central Inspection will need to interpret which parking standard shall apply.

The Unified Zoning Code permits communication towers in the ?GC? General Commercial and more intensive districts ?by-right.? However, the Zoning Code requires the applicant to provide the following information:

- (1) there is no available space on existing or approved towers or other structures which can be utilized to meet the applicant's communication needs;
- (2) there is no other physically and/or fiscally feasible opportunity to rebuild an existing tower or other such structure on which the communication equipment may be located, or to modify an approved tower or other structure. A rebuilding opportunity will be considered fiscally feasible if the cost of rebuilding an existing tower is no more than the cost of building a new tower on a new site;
- (3) the owner of the tower shall agree in writing at the time of the issuance of a building permit the following:
 - (a) that the tower is designed to accommodate at least three communication companies and that reasonable accommodations will be made to lease space on the tower to other communication companies so as to avoid having a proliferation of towers which are not fully utilized, and
 - (b) the owner of the land and the tower will make available in the future the opportunity for another party to pay the cost to rebuild the tower to support additional communication equipment where physically and fiscally feasible.

The applicant supplied technical information intended to justify the tower request to staff just one week before the staff report had to be completed. Staff asked the applicant to defer this request in order to fully evaluate the application. The applicant refused to defer the case. This information has been submitted to an engineering consultant retained by the Planning Department, and it is unclear at this time whether an evaluation can be concluded by the Planning Commission meeting.

Parcel 3 of this CUP is currently limited to general office and retail uses. The maximum gross floor area permitted on Parcel 3 is 78,800 square feet for commercial uses. If this amendment is approved, an administrative adjustment will be required to increase the permitted maximum gross floor area for commercial development from 78,800 square feet to 79,376 square feet.

The applicant also will be required to file a variance request with the Board of Zoning Appeals, to reduce the height compatibility requirement for this 120 foot tower. The applicant is to provide a setback distance of 305 feet from the adjacent "SF-6" zoning district located to the east. They are providing 120 feet.

There is commercial and office developments located to the south, north and west on property zoned "LC." East of the application area is a drainage dedication, Ash Briar Residential Development and the Plaza Office Park. The nearest residential property in Ashbriar is 350 feet from the proposed tower.

CASE HISTORY: The Central Avenue Plaza C.U.P. (DP-126) was originally approved in 1983.

ADJACENT ZONING AND LAND USE:

NORTH: "LC"	Retail shopping center
SOUTH: "LC"	Office Building
EAST: "SF-6" and "GO"	Condominiums and Plaza Office Park
WEST: "LC"	Retail shopping center

PUBLIC SERVICES: This site has access to Carriage Parkway, a two lane local street with no available traffic volumes. Municipal sewer and water are available to serve this site.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide identifies this area as appropriate for commercial development. The Plan recommends that commercial developments of this size should be located in "planned centers" versus extended strip developments. Such "centers" should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations.

The Transportation utilities locational guidelines in the Plan also recommend that utility facilities with significant noise, odor, and other nuisance elements should be located away from residential areas. Adopted policy in the treatment of communication towers is also established in the Zoning Code, regarding the need to document that no existing or approved towers or structures can meet the communication need, or an existing or approved tower or structure can be used, modified, or rebuilt before a new tower is permitted.

RECOMMENDATION: Staff feels that this is a more suitable site for a communication tower than the recently proposed site at Central and Pershing. The tower would be more removed from residential uses, partially screened from view by vegetation and buildings, lower in height and less obtrusive in design. However, the required documentation was received only one week prior to the staff report having to be mailed out, and has been submitted to a private consultant for review. Staff is currently waiting on their interpretation of the data. However, it does not appear that the report adequately explains why one or more locations for antennas on existing buildings or structures in and around the vicinity cannot be utilized to improve the service problems. These would include: Hillcrest Tower, Rutan Building, Central/Hillside medical building, Robinson School microwave tower, VA hospital, residential tower at 13th and Woodlawn, and two church steeples near Douglas and Oliver. Therefore, staff is requesting that the request be DEFERRED for two weeks to the June 10th MAPC hearing.

However, if the Planning Commission believes this is an appropriate location for a communication tower and feels the request should be approved, then staff recommends that the Commission make appropriate findings and:

RECOMMENDATION: Planning staff recommends the following:

- A. APPROVE the rezoning from "LC" Limited Commercial to "GC" General Commercial.
- B. APPROVE the amendment to the Central Plaza C.U.P. to allow a communication tower on Parcel 3, subject to the following conditions:
 1. The site shall be developed in general conformance with the approved site plan, with an eight-foot tall wood fence constructed around the perimeter of the site. The 68 foot by 25 foot area shall only be used for a communication tower and related equipment.
 2. All requirements of Section III.D.6.g of the Unified Zoning Code shall be met.

3. The applicant shall file an administrative adjustment to increase the permitted commercial square footage permitted on Parcel 3 to 79,376.
4. The applicant shall file a variance request to reduce the compatibility height requirement from 305 to 120 feet for a 120 foot tall communication tower.
5. The tower shall be a monopole type tower and not exceed 120 feet in height.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: There are commercial and office developments located to the north, south and west on property zoned "LC" Limited Commercial. A 100 foot wide drainage ditch is located just to the east of the application area. Plaza Office Park is located east of the drainage ditch. The closest residential properties are approximately 350 feet northeast of the application area.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned "LC" and used for parking which could continue.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is surrounded by commercial development and a 100 foot wide drainage easement. The communication tower will not significantly increase trash, noise, or traffic in the area and therefore should not detrimentally affect nearby properties. The residential property to the northeast will be 350 feet from the tower and will be partially screened by a commercial building and vegetation along the drainage ditch and therefore should not be significantly impacted. The applicant notified the homeowners association, which covers the residences closest to the property, and it is understood by planning staff that they do not object to this use. Commercial buildings to the south of the tower should also screen the tower from travelers along Central.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan identifies this area as appropriate for commercial uses. The Transportation/Utilities locational guidelines of the Comprehensive Plan also recommend that utility facilities with significant noise, odor and other nuisance elements, should be located away from residential areas. This request does conform to this policy, in that the tower will be 350 feet away from residential property and the property will be partially screened.

FULP "A point of order question, please. Since this is the Council's recommendation that we received, 7-0, and it is staff's recommendation that this be deferred for two weeks, could we just defer the staff's presentation for two weeks and just simply have a public hearing and move on?"

KROUT "Yes, I think we don't have to make a presentation. We should see if there is anyone here to speak."

JOHNSON "Applicant or agent, do you want to speak today?"

RUSS EWY "We have nothing further to add. I think we are all in agreement with the need or the basis of that deferral. We have been working here for the last few days with this consulting firm and hope to provide a little bit more information to Marvin. I will answer questions that you have, since I am here."

JOHNSON "Thank you. Is there anyone here to speak in favor of this? Is there anyone here to speak in opposition? Seeing none, I will bring it back to the Commission."

MOTION: That the case be deferred for two weeks to the June 10 meeting.

CONSOLVER moved, **LOPEZ** seconded the motion, and it carried unanimously (11-0).

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4. **Case No. Z-3322** - Robert, Carol Herring and Mitchell Herring (Owners) and John Tasset (Agent) request a zone change from "GO" General Office and "MF-29" Multi-Family to "LI" Limited Industrial on property described as:

The north 64 feet of Lot 35 Zimmerly's Addition to Wichita, Sedgwick County, Kansas, and the north 67 feet of Lot 11, Block 8 of Perry's Addition, generally located at 1541 S. Santa Fe and 1538 S. St. Francis (North of Harry and east of St. Francis).

KEITH GOOCH, Planning Staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting to rezone a .48 acre tract located north of Harry and east of St. Francis from "MF-29" Multi-family and "GO" General Office to "LI" Limited Industrial. This would allow for the expansion of an existing business, located on the two platted lots south of the application area. The applicant has stated that the business at this location does custom coating, painting,

and/or baking of products brought to them as well as manufacturing of plastic window well covers. In the future, the applicant might do other manufacturing of products that are similar to the products brought to them as part of the custom coating, painting, and baking business. The applicant has stated that there are 15 persons currently employed at this location and with the expansion another 10 could possibly be hired.

The applicant has submitted a site plan of the entire ownership, which shows an existing 15,916 square foot complex and a 12,160 square foot expansion consisting of a new building (20 feet tall) with the possibility of adding a 4,400 square foot building in the future. These buildings would be used for office uses, manufacturing, and warehousing. The Unified Zoning Code requires one parking space per 250 square feet of office, one parking space per 500 square feet of manufacturing and one parking space per 1,000 square feet of warehousing for the first 20,000 square feet. As shown on the site plan submitted by the applicant, which has 3,360 square feet of office space, 10,300 square feet of manufacturing space and 10,600 square feet of warehousing space, a total of 46 parking spaces would be required. There are a total of 52 parking spaces shown on the attached site plan. The two parking spaces along Harry just north of the entrance should be removed to allow better access to the site as well as the two handicapped spaces to the east of this opening.

The two homes currently located on site and shown on the site plan along Santa Fe will remain at this time but could be removed in the future for more parking. The northern most home will become a nonconforming use if the rezoning is approved for "LI," while the southern home is currently a nonconforming use and is grand fathered. Single-family homes are not permitted in the "LI" district.

The applicant would be required to provide the following: a landscaped street yard along St. Francis for the north 64 feet of the application area and along Santa Fe for the north 67 feet of the application area and along Harry; a fifteen foot buffer would also be required along the rear and side yard where adjacent to residential zoning (North property line and along Santa Fe and St. Francis); parking lot screening and landscaping along Harry and along St. Francis and Santa Fe where across from residential zoning; and a solid screening fence along the north property line and St. Francis and Santa Fe where across from residential zoning.

This business is located one block west of the Union Pacific Railroad. In the future, there is a possibility of an overpass being constructed over this rail line. If this is constructed, the concept plan shows that direct access to Harry from Santa Fe would be eliminated, and all traffic would have to use local streets to St. Francis or Washington to gain access to Harry. Harry Street is not currently under consideration for an overpass, but could be constructed in the future. The applicant should be advised of this.

There are single-family homes located north, east and west of the application on property zoned "MF-29" and "GO" General Office. South of the application area is the existing business on property zoned "LI." South, east and west of the existing business are other commercial and industrial uses on property zoned "LI" Limited Industrial.

CASE HISTORY: None.

ADJACENT ZONING AND LAND USE:

NORTH: "MF-29" Single-family homes
SOUTH: "LI" Industrial uses
EAST: "MF-29" Single-family homes
WEST: "MF-29" and "GO" Single-family homes

PUBLIC SERVICES: This site has access to Santa Fe, both two-lane residential streets with no traffic volumes available; St. Francis, a two-lane one way arterial with traffic volumes of 1,187; and Harry, a four-lane arterial with traffic volumes of 11,073. The 2020 Transportation Plan estimates the volumes along Harry will increase to 19,902. This Plan also indicates the desirability of widening Harry to five lanes, but the City of Wichita Capital Improvement Program does not project any improvements along Harry. There are municipal services available to serve this site.

CONFORMANCE TO PLANS/POLICIES: The Comprehensive Plan identifies this area as appropriate for low density residential uses. This category provides for the lowest density of urban residential land use and consists of traditional, single-family detached homes, zero lot line units and cluster subdivisions, as well as schools, churches, and similar uses found in such areas. However, the area just south of the application area is identified as appropriate for commercial.

RECOMMENDATION: Staff does recognize that this expansion is encroaching into an area with single-family homes around this industrial use. However, it is an expansion of an existing business and the Planning Commission has an unwritten policy of supporting expansion of existing businesses. In this case, the proposed expansion should clean up the application area. It is important to keep businesses in the central city and not force them to relocate to outlying areas. Therefore, based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year and the following conditions of a Protective Overlay:

1. The site shall be developed in general conformance with a revised site plan which removes the two parking spaces and the one handicap parking space near the entrance to Harry.
2. The applicant shall comply with the screening requirements of the Unified Zoning Code and the Landscape Ordinance along the north, east and west property lines where adjacent to residential zoning.

3. The applicant shall close the westernmost entrance to Harry Street during the time of platting.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: There are single-family homes located to the north, east and west on property zoned "MF-29" and "GO." Also east and west of the property is commercial and industrial uses on property zoned "LI." South of the property is the current business the applicant owns on property zoned "LI."
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently limited to residential uses. It seems very unlikely due to the close proximity of the industrial uses to the south that any residential property would be constructed on the application area. Therefore, it seems appropriate for this property to be rezoned for similar uses found south of the application area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The property to the north is zoned "MF-29" and is developed with single-family uses. There are also single-family homes located to the east and west of the application area. Through the Landscape Ordinance and the required screening of the Unified Zoning Code these homes should not be detrimentally affected by the expansion of the business.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for low density residential development. However, due to the industrial zoning to the south, it seems highly unlikely that any residential development would occur on-site.
5. Impact of the proposed development on community facilities: The expansion of this business will increase traffic in the area, however there should be minimal traffic affecting the single-family homes to the north. Because the property has access to St. Francis, a one-way street heading south and also Harry, a four-lane arterial. The two driveways along Santa Fe are not located across the street from residential zoning except for approximately 10 to 15 feet of the northern driveway and therefore should not significantly impact the homes to the east. There should be minimal impact on the municipal services in the area.

GOOCH "Are there any questions of staff?"

JOHNSON "Any questions? Thank you, Keith. Applicant or agent."

JOHN TASSET "I am at 207 North Pershing, the agent for Mr. Herring. Are there any questions regarding this application?"

FULP "Are you and the applicant in agreement with staff's recommendations of platting within one year and the conditions of a Protective Overlay?"

TASSET "We have no particular problem making that compliance."

FULP "Thank you, sir. Thank you, Mr. Chair."

JOHNSON "Are there any other questions of the applicant? Thank you. Is there anyone else to speak in favor of this? Is there anyone here to speak in opposition? Seeing none, what is the pleasure of the Commission?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: There are single-family homes located to the north, east and west on property zoned "MF-29" and "GO." Also east and west of the property is commercial and industrial uses on property zoned "LI." South of the property is the current business the applicant owns on property zoned "LI." The suitability of the subject property for the uses to which it has been restricted: The site is currently limited to residential uses. It seems very unlikely due to the close proximity of the industrial uses to the south that any residential property would be constructed on the application area. Therefore, it seems appropriate for this property to be rezoned for similar uses found south of the application area. Extent to which removal of the restrictions will detrimentally affect nearby property: The property to the north is zoned "MF-29" and is developed with single-family uses. There are also single-family homes located to the east and west of the application area. Through the Landscape Ordinance and the required screening of the Unified Zoning Code these homes should not be detrimentally affected by the expansion of the business. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for low density residential development. However, due to the industrial zoning to the south, it seems highly unlikely that any residential development would occur on-site. Impact of the proposed development on community facilities: The expansion of this business will increase traffic in the area, however there should be minimal traffic affecting the single-family homes to the north. Because the property has access to St. Francis, a one-way street heading south and also Harry, a four-lane arterial. The two driveways along Santa Fe are

not located across the street from residential zoning except for approximately 10 to 15 feet of the northern driveway and therefore should not significantly impact the homes to the east. There should be minimal impact on the municipal services in the area.) I move that we recommend to the governing body that the request be approved, subject to platting within 1 year, and the following Protective Overlay restrictions:

1. The site shall be developed in general conformance with a revised site plan which removes the two parking spaces and the two handicap parking spaces near the entrance to Harry.
2. The applicant shall comply with the screening requirements of the Unified Zoning Code and the Landscape Ordinance along the north, east and west property lines where adjacent to residential zoning.
3. The applicant shall close the westernmost entrance to Harry Street during the time of platting.

FULP moved **CONSOLVER** seconded the motion, and it carried unanimously (11-0).

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5. **Case No. P.O. 33 Amendment #1** - P.D.S. Development Company, Inc. C/o John Greenstreet, President (owner); PEC, P.A., c/o Gary Wiley (agent) request a Protective Overlay Amendment to allow construction of a 62-unit hotel, located upon Lot 1 and 2 of Plaza Central Office Park on property described as:

Lots 1 and 2, Block 1, Plaza Central Office Park Addition, Sedgwick County, Kansas. Generally located on the southeast corner of Central and Jackson.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant is requesting an amendment to Protective Overlay 33 currently zoned "GO" General Office for a 2.22 acre tract located at the southeast corner of Central and Jackson Street. The amendment applies only to Lot 1 and Lot 2 of Plaza Central Office Park, and represents ¼ of the total office park site. The applicant is requesting the amendment in order to develop a residential design hotel upon the western portion of the tract along Central.

Plaza Central Office Park was rezoned "GO" General Office on January 13, 1998, subject to platting. The plat was approved by MAPC on March 16, 1999, and is awaiting recording. The rezoning to "GO" will be final upon recording of the plat. During the rezoning process, the applicant offered several restrictions on the proposed development in the form of a Protective Overlay in order to address the concerns of opposing area residents. This Protective Overlay has included use restrictions, limits of floor area, sign restrictions, architectural controls, height limits, setbacks from Central, and access controls. In addition to the P-O, the agent also submitted a concept plan for the proposed office park.

The "GO" district was added to the Unified Zoning Code to "accommodate office development and other complimentary land uses and is generally compatible with the 'Office' designation of the Wichita-Sedgwick County Comprehensive Plan." The "GO" district allows such uses as hotels/motels, hospitals, medical service uses, in addition to offices. Hotels in the "GO" district are restricted in terms of allowable accessory uses (no restaurants, service stations, drinking establishments or nightclubs are allowed). However, the Protective Overlay eliminated hotels/motels as a permitted use for this site.

The application area is surrounded by single-family homes on large lots zoned ASF-6" Single-Family Residential. Part of the property north of Central remains in the County and is an undeveloped pasture with "SF-20" zoning. The property across Jackson to the west allows the sale of agricultural products for a five-year time period via a Conditional Use (CU-453) approved on September 11, 1997, by the MAPC. Currently, there is a request to rezone 8.9 acres located at the southwest corner of Central and Jackson, including the area with the Conditional Use, from "SF-6" Single Family to "GO" General Office. The request, which was Case Z-3316, was approved by MAPC on April 29, 1999 (8-5), and will be heard by the City Council on May 25, 1999. If approved, this site can be developed with general office development. A Protective Overlay for the site in Case Z-3316 mirrors the Protective Overlay on this site.

Plaza Central Office Park is bisected by the Spring Branch Tributary #4 and is characterized by wooded drainageways and mature trees. This area lies within the floodplain and is shown as Reserve "A" on the plat. All development on the site is to be located outside Reserve "A". Lot 1 and Lot 2 are located northwest of Reserve "A". The original site plan, attached as part of the Protective Overlay, indicated a 20,000 square foot two-story office building for each lot, for a total of 40,000 square feet. The revised site plan submitted with this application shows the two lots being used as a single unit for placement of a U-shaped residential hotel with 62 units and 41,260 square feet. If this development is approved, it will leave 38,740 square feet allowable on the remainder of the tract to stay within the overall density limit in the P-O.

The drawing of the proposed facade along Central gives the appearance of a multi-family apartment structure except for the entry area. According to the Protective Overlay, this design will set the tone for the architectural character on the rest of the tract. A proprietary pylon sign is located directly north of the entrance. The "GO" district also restricts signs to a maximum of 32 square feet, with no artificial

illumination. The P-O further restricts the sign to a height of 20 feet.

CASE HISTORY: As was discussed previously, the site was rezoned "GO" General Office on January 13, 1998, subject to platting. The plat, Plaza Central Office Park, was approved by MAPC on March 16, 1999, and is awaiting recording. The rezoning can be finalized once the plat is recorded.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-6"; "SF-20" Undeveloped
SOUTH: "SF-6" Single-family residences
EAST: "SF-6" Single-family residences
WEST: "SF-6" Single-family residence; limited agricultural sales; (proposed for office development)

PUBLIC SERVICES: City of Wichita water service is available to serve this area, with sewer service provided by the Four Mile Creek Sewer District (unless the City acquires it and provides service, which is not planned at this time). The property has access to Central, which was recently widened to a four-lane arterial. It has existing traffic volumes of approximately 5,858 average daily trips (ADT) between Greenwich and 127th Street. The 2020 Transportation Plan has projected traffic along Central to increase to approximately 15,000 ADT for this segment. However, this volume would be expected to increase with the development of this tract as an office park, and, in the event the property to the west is also developed as an office park. The substitution of 40,000 square feet in general office usage to 41,260 square feet as a residential hotel could be expected to moderate the projected traffic increases since all suites styles of hotels generate approximately 1/3 the expected additional traffic volume of general office development.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for low-density residential development. This residential category provides for the lowest density of urban residential land use and consists of traditional, single-family detached homes, zero lot line units and cluster subdivisions, as well as schools, churches, and similar uses found in such areas. However, the City Council approved office zoning for this tract last year, and soon will be considering more office zoning for the tract to the west, across Jackson.

RECOMMENDATION: Staff was not supportive of the rezoning for the office park originally. However, the requested amendment to the Protective Overlay would have the effect of providing a quasi-residential use within the office park. The nature of all suites style of hotels is to provide high density short term residential occupancy without the accompanying convention or restaurant facilities that lend a more highly commercial character to the use. There will be significantly less traffic generated by this use than an equivalent floor area devoted to office use, and because fewer parking spaces are required, there will be more land on the lots remaining as landscape area. The style and materials that would be established by this development will need to be followed for the rest of the tract. After reviewing the application and based on information available prior to the public hearing, staff recommends the request to amend the Protective Overlay be APPROVED. The delineated language below indicates the recommended modifications to the P-O:

1. Development shall be limited to the following uses: single-family, duplex, day care (limited and general), automatic teller machine, medical services, and office (general), and a hotel for Lot 1 and Lot 2 only, limited to a maximum of 62 rooms or suites.
2. Development shall be limited to a maximum gross floor area of 80,000 square feet. (Approximately 21% of the 8.6 Acres).
3. All free-standing signs shall be monument-type signs with a maximum height of 20 feet.
4. Architectural Control:
 - A. All buildings on the property shall share the similar architectural character, color, texture, and the same predominate exterior building material. Building walls and roofs shall have predominantly earth-tone colors, with vivid colors limited to incidental accent. Development of a hotel on Lots 1 and 2 shall be in general conformance with the elevation drawings submitted and attached to this ordinance.
 - B. All parking lot light poles shall be of the same color and design, and shall have cut-off fixtures which direct light away from nearby residential areas. Light poles must be limited to a maximum height of 14 feet.
5. All buildings shall be limited to 35 feet in height with a maximum of 2 stories.
6. Minimum building setback from the center line of Central shall be 150 feet.
7. Access to Jackson shall be limited to one opening.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is imbedded within "GO" General Office zoning, subject to platting and the Protective Overlay that is the same as given above, with the exception of adding the residential design hotel as

a permitted use to Lot 1 and Lot 2. The change may actually improve the compatibility of Central Plaza Office Park with the surrounding residential area.

2. The suitability of the subject property for the uses to which it has been restricted: The application area is currently zoned for general office and could be developed as such without this amendment.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The residential design hotel will generate less traffic, leave more landscaped area, and should be more in character with traditional residential use than office use might otherwise have been.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The amendment to the Protective Overlay conforms with the locational guidelines for both higher density residential use and office use, of being adjacent to arterial streets.
5. Impact of the proposed development on community facilities: The requested amendment should not have any additional adverse impact on other public facilities.

GOLTRY "Are there any questions?"

WARREN "You made reference to having an architectural design compatible, and you are talking about three lots. I am having a hard time identifying these three lots that you are talking about. What are the three lots we are trying to get architecturally compatible?"

GOLTRY "I think if I use the pointer I can demonstrate it more fully. It is part of the Subdivision platting process. There are actually five lots on Central Plaza Office Park. (Indicating) This is Lot 1, 2, and these are 3, 4 and 5 over here. Five is the little one over here, and then we have the others on this side. There was a building proposed for this side north of the lake, and there are two buildings below.

Basically, on the original site plan, this was shown as a 10,000 square foot building (Lot 3). There was a 20,000 building; there was a 10,000 building (Lot 4), there is a little existing single-family house in this area at this point in time (Lot 5). There would be basically 38,000 left to develop with this amendment, so slightly under the 40,000 that is comprised by Lots 3, 4 and 5 on the site plan that was approved as part of the original Protective Overlay to be used in this area. The reason that this smaller area (Lots 1 & 2) is taking up such a large proportion of the square footage is because we have to bear in mind that there is quite a bit of drainage and reserve areas within the site."

WARREN "So you are going to make this architecturally compatible with what?"

GOLTRY "The other developments in the future would be architecturally compatible with this development."

JOHNSON "Are there any other questions of staff? Thank you. Applicant or agent."

GARY WILEY "I am here on behalf of the applicant. I would like to start out by saying that we are in complete agreement with all of the staff comments. The applicant intends to remain a major owner in this particular hotel. As Donna said, it will be a 62 unit residential design facility. It would be similar in nature to a Residence Inn. The estimated cost of this hotel is some \$5 million, or about \$80,000 per unit. Mr. Greenstreet, the applicant who is here today, also owns the balance of the Subdivision, which is outlined here. He plans on starting an 18,000 square foot office building right in that area, his office building, hopefully within about 30 days, depending on getting the financing all squared away.

I would like to just point out, as Donna indicated, that the zoning to the east, the zoning to the south, and the zoning to the west of this property is already zoned in the 'GO' General Office category. I know some of the concerns that did happen at the CPO meeting was the proximity to residences. The closest residential structure to this proposed hotel is some 400 feet away. Right now, you have a home here that is some 600 feet away. You have a residence here that is some 750 feet away, and then there is one over here off of Central that is some 400 feet away. So those are the closest residential structures to this facility. I don't know that I can add anything more at this point in time. I would be happy to answer any questions that you have."

OSBORNE-HOWES "Just a quick question. You said that it was surrounded by 'GO'?"

WILEY "Yes, south of Central. Everything to the west, the south and the east of the hotel is 'GO'. The north side of Central is still in the Residential zoning category."

OSBORNE-HOWES "Staff shows that it is 'SF-6'."

WILEY "I understand. This piece right here was just approved for 'GO' by the City Council on Tuesday."

KROUT "It was approved, but it is not officially on the map."

WILEY "Yeah. And this plat of Plaza Central, and I know that Donna mentioned that the plat was not recorded yet, but it is a recorded

plat at this time. The whole area is 'GO'.

JOHNSON "Are there any other questions? Thank you. Is there anyone else here to speak in favor of this? Is there anyone here to speak in opposition?"

KROUT "As this speaker comes forward, Donna forgot to mention and wanted me to remind you that you have the CPO information in front of you at your table. On a motion to approve, that vote failed by a 3-4 vote."

BONNIE ERNST "I live on the property immediately east. That is my house right there, so I guess I am the 400 feet away person. Our main concern about having a 62 unit hotel is that the question of traffic impact is assumed to be lower by a residence hotel than it would be by General Office, during peak hours, is how it was put during the CPO meeting. Peak hours for whom? Peak hours for General Office would normally be 8:00 to 6:00. Most of us who live in the area are working from 8:00 to 6:00, so any traffic that is generated by a General Office in that area doesn't impact us. It is after hours that we are concerned about. It is even the 3:30 to 3:45 rush from Raytheon is more than the General Office traffic, I would think, and even that doesn't impact us very much, it is just that 15 minute stretch there, so if that is averaged in, then I don't think that is a very fair way of assessing it. We are looking at a General Office, if it is, for example, a doctor's office or a realtor's office, they probably wouldn't be there on the weekends either, so the general traffic would be much less than what their representing it to be, we feel. That is one of our concerns.

Another concern is the sewer. We were all assessed \$12,000 per unit to hook into the sewer, or for the sewer whether we hooked in or not, actually, and a 62 unit hotel has to impact, in some way, the sewer as well as drainage off of there into the lake. There is a small lake on their property, and then there is another lake here, which also has some of the run-off from North Central, and I am not sure what the flow of the creek is, but I expect that there would be some impact on that area for that.

Safety is another question that we have. A hotel frequently, especially someplace like this, I would think, could attract thieves, and we have been very lucky to have very low occurrence of any kind of theft or crime in our area. I would be very concerned about that. I also want to know, if there are no amenities for the hotel at this point, how long will it be before amenities are requested and zoning is requested to be changed for those to accommodate this hotel. Those are my main concerns."

JOHNSON "Are there any questions? Okay, thank you. Is there anyone else to speak in opposition?"

JILL STANFILL "Hello, I actually live around the corner and a little bit away from the property, but I am in the same area. My only concern is that I want to be assured that should the hotel be approved and there are 62 units that they equally share in the expenses for the sewer. In the neighborhood, every unit, whether it was even a temporary unit, as in the trailer that is expected to be removed from my property and not ever be replaced, and every apartment unit, whether it be one, two or so on bedrooms, whether there was one person in it, or they were empty, every single one was assessed the approximately \$12,000 for the sewer hook-up. I want to be assured that should the hotel go in that it is assessed one per unit.

As I understand, the office buildings that have already been approved were only going to, although it added up to over 80,000 square feet, somehow it was only going to be assessed for sewer hook-up units. I would like to know if I can find out right now how that will be addressed so that I might either plan to either do something else about it or be assured and to let my neighbors know also, that that wouldn't be a concern. Thank you."

JOHNSON "Are there questions?"

FRYE "I think that is an interesting question that you brought up. I, for one, do not have an answer. I don't know if there is anyone at this table that does, but I think it is a very interesting question."

STANFILL "Could I ask a question of the developer?"

FRYE "The Chair will decide what to do. I was just responding to what you said."

JOHNSON "They will have two minutes for rebuttal. This will be discussed then."

STANFILL "Can I just pose my question to you? I would like to know if his figure of \$80,000 per unit includes what figure for sewer hook-up."

KROUT "Let's let him respond to that."

STANFILL "I certainly wouldn't want them to be surprised by this, as we were. Does this mean that we don't know yet, or that I need to come to another meeting, or what?"

KROUT "I think we don't know yet, but we will let the applicant tell you."

STANFILL "So this might be an inappropriate time to get that issue out in the open, or on record?"

KROUT "When the applicant makes his rebuttal, he will respond as to where he is and what he thinks it will be, and what conversations he has had with the County about that. I am not sure that it ought to be an important consideration when the Planning Commission is really looking at whether this is the proper land use for that area. That may be an issue that maybe you will want to take up with the County Commission."

JOHNSON "Is there anyone else who wants to speak in opposition? Please come forward."

R. W. HAYDEN "I don't live in the barn that was pointed out as being quite a ways away, that is our barn. Our house is here, by the lake. The MAPC originally denied this whole thing, and it is totally inappropriate. There is commercial land here (indicating), this is for sale, this is currently being built into a Quik-Trip-type thing. All of this commercial stuff is available. We simply have an opportunist here who has a lot of money and who wanted the land right in the middle of a residential area where we paid a premium for. This lake is right at our back door, across here are deer, bobwhites, quail, squirrels, etc., and we have a view of that type of thing, and we are willing to pay for it."

The first time we flushed the stool, there seems to be some difference. For what we were assessed to build the plant, buy the land and lay the pipe to Crestview Country Club, plus the \$12,000, I add up to being about \$20,000 for sewer. We were willing to pay that because we have something that is unique, as do the people that live right across the street here. They are recent purchasers, and I don't know where these young people get their money. I have been poor all of my life and probably will continue to be so, but they were willing to pay half a million dollars to have that, and then you propose to have this thing right across the street from them, in the middle of the block.

There has not been one shovel-full of dirt that has been moved in this land that you recommended against being zoned General Office. Now they are wanting to remove the Protective Overlay and change from the Office zoning to a higher usage. There is no restaurant there. That means that all of these people are going to have to go and eat someplace else. They are going to come in, slam their doors to check in, slam their doors to go around to their rooms. There is a plat that shows the parking areas here, and they back right up to adjacent property on both sides. Then when they go out they will slam the doors, and traffic in and out day and night. General Office was bad enough. That was from 9:00 until 6:00, probably five days a week, and wouldn't add to that traffic. They will either have to make a left turn here or a left turn from the property to go to anyplace that has food facilities.

Agreeing with my neighbor, going back to the picture, right over here, down Garnett Street, if all of you remember those old four-plexes that the government built around Boeing, Beech, etc., there is one of those over there, and it has four units in it. Above their garage they have an apartment where their son and his wife live and they have a home on another acreage, probably one of these right here. They were assessed 6 times \$12,000 because they had four one-bedroom apartments in this old four-plex. The one unit for the son and daughter-in-law that live above the garage, and then for the house, another one. We don't want to see another thing like immediately up this way where another opportunist came in and you took in an island annexation, and they pumped their sewer over the hill and dump it into the trailer park, into the war industry's sewer, which was a temporary sewer laid there 50 years ago for World War II, and it is already overcrowded.

We are just so tired of being overrun by these people who don't live in the area. They try to buy it by the acre and sell it for \$4 or \$5 a square foot. This should have never been commercial when there is plenty of commercial land available for commercial for people to buy. This is a domino effect. The applicant sitting here, has already bought this whole 10 acres here."

JOHNSON "Sir, your time is up."

HAYDEN "Can I request a couple of minutes more for the domino effect?"

MOTION: That the speaker's time be extended by 2 minutes.

FULP moved, **FRYE** seconded the motion, and it carried unanimously (11-0).

HAYDEN "Thank you. There is a natural barrier on this, and that is possibly why you approved it before. The barrier between this other one is a barbed wire fence, that is all that is there. They didn't apply for this because to do that, they would pick up this whole neighborhood down here in opposition, but yet they have hauled hundreds of truck loads of dirt into this south five acres of this area, and they surely plan to build something."

I am sorry that there are not more neighbors here, there were more neighbors at the CPO meeting, but these are people that have to work during the day and the wives do too. I am retired, so I could be here. But to remove this Protective Overlay, they haven't done one thing with any of the land. They are just going to be in here doing upgrade, upgrade, upgrade, and the next thing will be that they have to have a restaurant to eat in, got to have a liquor store so they can mix their drinks. This is all in a residential area, and it has no business to be there in the first place. I really beg of you to keep it no looser than what you originally planned it and that was General Office. Thank you."

JOHNSON "Are there any questions? Thank you, sir. Is there anyone else to speak in opposition? Seeing none, the applicant has two minutes for rebuttal."

WILEY "First off, I would just like to say that the proposed hotel is located within half a mile of Raytheon and in approximately half a mile of the K-96 and Turnpike exit at 127th Street. We are not here today asking that you remove the Protective Overlay. We are asking that we be allowed to amend the overlay to allow a hotel situation, not to exceed 62 units, and in a residential design, just as was suggested in

the staff recommendations.

There was talk about security, or the thievery that might occur here. The hotel will, in fact, employ a security guard from the hours of 10 p.m. to 6 a.m. every day. There are surveillance cameras throughout the facility and we know that it will be a very safe facility. Remembering that this is an expensive-type hotel and we are looking at \$100 a night plus on the proposed units.

There was a question about the sanitary sewer. On April 23, we met with Jim Weber to start discussions on the requirements for the fee for the Four Mile Creek Sewer at this location. We are still waiting on a response from Mr. Weber on that. It was his suggestion that we get some average winter months consumptions for some similar type facilities throughout the City. We did that and furnished it to him. We have also projected the estimated uses on this particular hotel. We did look at a similar situation just approximately half a mile to the east of here, which is the Vynes. It is an assisted living facility, and I know that he is going to be taking that into consideration as to how he arrives at whatever costs that we will be required."

JOHNSON "Are there any questions?"

LOPEZ "In the original request for zoning on January 13, as stated in the staff report here, during the rezoning process, the applicant offered several restrictions to the proposed development in the form of a Protective Overlay, in order to address the concerns of the opposing residents. The Protective Overlay eliminated hotels and motels as a permitted use on the site. I am just assuming now that the applicant is no longer concerned with the concerns of the opposing residents."

WILEY "Richard, the use of a hotel or motel was never brought up as an objection by any of the neighboring residences at the time."

LOPEZ "Why was it offered then?"

WILEY "We selected the things that we thought, at the time, would in fact go here. We did that through meeting with staff, and arrived at the Protective Overlay as it is today. After meetings with Raytheon and their flight safety and others of the similar nature, we are talking an extended stay facility. This became a real viable thing."

LOPEZ "No, what I am asking you is that these were offered up for elimination, and at that time, you are stating for the record that they weren't concerns because they weren't brought up, but now after the fact, they have been brought up as concerns. These concerns are now not concerns that the developer is now concerned with basically."

WILEY "I didn't say that. I think that the facility that we are proposing and with the addition of the requirements to the Protective Overlay, we are still limited still. We are talking a residential-design structure. It has 8 and 12 pitch; it doesn't look like a hotel or motel, and it is not designed for that whatsoever. It is designed for an exclusive extended stay facility."

OSBORNE-HOWES "Of course, we are not not approving the zoning for an upscale thing, we are talking about a motel/hotel thing. What could be allowed there now?"

WILEY "You could have all kinds of medical facilities, any General Office, day care limited and general, ATM machines, single-family, duplexes. That is Item 1 of the recommendation. The only thing we are asking to change is that area for Lots 1 and 2 and not the entire area. That is Page 4 of the staff report."

OSBORNE-HOWES "That is currently what is allowed there?"

WILEY "Yes. Those are all currently allowed there."

CONSOLVER "Gary, looking at your proposal here, is this the only way this will fit on this property? Can you come up with something else that doesn't put all of the parking and the traffic out there in front?"

WILEY "Well, we are trying to preserve the trees to the south and to the west of the hotel and have that view for the residents. There is a large drainage facility that goes right here and wraps around here and goes into this pond. What we have tried to do is to orient the units so that they have the exposure to the trees and not to the Central side."

CONSOLVER "I understand what you are trying to do for the people who stay in the hotel, but what I see is a lot of cars parked in front of it."

WILEY "Granted, there will be cars. We were required a 150 foot building set back with that covenant also, that Protective Overlay, which we have done. We have to do something in that 150 feet, and the parking can go up in there. What we have, as you can see, is there is a nice landscaped area in front of the parking lot. It is some 20 or 25 feet between the property line and the nearest parking along the front."

KROUT "It will have to meet the landscape requirements, the streetyard, and parking lot landscape requirements also."

WILEY "That's correct."

KROUT "To go along with the landscape along that area, and how many parking spaces do you show?"

WILEY "It is one per unit and for the..."

KROUT "It is 70 spaces versus probably 120 spaces if you had an office."

WILEY "Yeah, probably 4 per 1000 feet on an office, and on one of that size, it would 160 spaces."

FRYE "Gary, it was mentioned about possibly wanting amenities such as a restaurant later. Could you just briefly speak to the traffic or the clientele that you anticipate staying there and what is to say that you won't, and I realize that you can't put a restaurant there unless you come back to this Commission, but I would like to know who and what you are looking at."

WILEY "These are residential suites. They have their own facilities within each of the units, if I am not mistaken, and the times that they don't cook themselves, they might go out, but they will have the facilities. These are large units. A motel of this size, 41,000 feet, would accommodate about 100 motel units."

FRYE "Do you anticipate a lot of corporate-type residents?"

WILEY "Yes. We are talking about Raytheon and the others."

FRYE "Short and long term?"

WILEY "And Mr. Greenstreet is with Plaza Real Estate. His office is being constructed there, and they, in fact, get a lot of relocated people that need an interim place to stay while they are looking for a home for them. This could be for that, as well."

FULP "Mr. Wiley, could you flip over to the area map? I am trying to get a bigger piece of the area. That's fine. I live out there, okay? Not just because this is my neighborhood, but because I have a concern here. Mr. Wiley, there is plenty of already zoned space available along Greenwich from Central all the way to, jeepers, to 21st Street on both sides of the street, nearer to, and/or no greater distance than this side is from Raytheon and Flight Control. Why not put this facility there? Because the zoning that already exists along Greenwich, all the way down to 13th and 21st Street on both sides of the street, and more zoning is coming, will allow hotels, will allow restaurants. Why put it here?"

WILEY "There are a couple of reasons. One, it is of a residential character. We want it in a residential district, not in a commercial district. We plan no commercial activities surrounding the whole thing. They will be office related. Remember, office is the zoning all along the west, the south and the east of this tract. The applicant here today, and a major of this hotel owns the property today. We are not asking for a zone change. We are asking for an amendment only to the Protective Overlay."

FULP "I understand that, but the Protective Overlay was outlined in January 13 1998 specifically prohibited hotels, restaurants, service stations, drinking establishments, night clubs. They were not going to be allowed. And that Protective Overlay was approved for a reason. It was supported by CPO (2) and was eventually supported by the residents of the area, saying, okay, change has got to come, but we will accept this change if it is not greater."

This is a free enterprise system, and I can go out and buy a piece of land like Mr. Greenstreet anywhere in the world I want to and take my chances on what I can do with it, and why not build a medical office on this piece of land? There is plenty of zoning to accommodate Raytheon, to accommodate long term business sleeping quarters. There is plenty of it available already along Greenwich. I just do not understand this reasoning to ask the Commission to break a Protective Overlay that was put in place for a specific reason with a specific outline."

WILEY "Remember, we volunteered this in conjunction with staff. There was never any neighborhood support of this Protective Overlay. They did not want anything, period."

FULP "Well, I understand that they didn't want anything."

WILEY "They were never in support of the Protective Overlay."

FULP "But it makes it more palatable to the community. They have to have something here, and it is the lesser of two evils in their minds."

WILEY "Right."

OSBORNE-HOWES "Marvin, can they put in multi-family housing there?"

KROUT "A General Office District permits multi-family, but now with the Protective Overlay, multi-family is not permitted."

WILEY "It can be two family."

KROUT "Single Family or duplex, yes."

JOHNSON "Thank you. What is the pleasure of the Commission?"

LOPEZ "When this second issue came to this Planning Commission on zoning case 3316, it came to light that strip zoning was starting to take place in this area. Now this issue has come before us after this was approved by the Commission to change the Protective Overlay that was agreed to, and from this Commissioner's concern, I don't believe that the developer is at all concerned with the opposition of the area residents. I think this is just the start of piece-mealing it out. I also want to bring out that the CPO voted to deny this."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The site is imbedded within "GO" General Office zoning, subject to platting and the Protective Overlay that is the same as given above, with the exception of adding the residential design hotel as a permitted use to Lot 1 and Lot 2. The change may actually improve the compatibility of Central Plaza Office Park with the surrounding residential area. The suitability of the subject property for the uses to which it has been restricted: The application area is currently zoned for general office and could be developed as such without this amendment. Extent to which removal of the restrictions will detrimentally affect nearby property: The residential design hotel will generate less traffic, leave more landscaped area, and should be more in character with traditional residential use than office use might otherwise have been. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The amendment to the Protective Overlay conforms with the locational guidelines for both higher density residential use and office use, of being adjacent to arterial streets. Impact of the proposed development on community facilities: The requested amendment should not have any additional adverse impact on other public facilities.) I move that we recommend to the governing body that the request be denied.

LOPEZ moved, **FULP** seconded the motion.

WARREN "It would seem to me that we are talking about a use. I have seen a lot of these, and they can be done, very, very well. Now, if I were living in that neighborhood, I would rather have this than I would a medical tower, or a big medical building. I am not so sure that I wouldn't rather have it than I would some office complexes I have seen. So there is going to be a use here, and an office complex with four times this much blacktop, I think could be equally offensively to the neighborhood as this. I don't see this as a use that is a lot harsher than that that is available to this developer now. I don't understand the reason for denying this. I think it is a pretty good use of the land, compared."

FULP "I appreciate your position, Commissioner Warren, but however, if you look at the codes relative to Office Complex, you couldn't put a tower there. Two stories, I think is the max that you could go. I envision a medical office park being, when it goes in there, being like the one that is at the intersection of Webb, where my dentist is. It looks very residential. I agree with Commissioner Lopez. That is the reason I seconded the motion. Regardless of the location, this is piece-mealing a Protective Overlay. And since there are plenty of alternative land available already zoned that could accommodate this live-in type motel structure. I just could not support breaking up this existing neighborhood."

OSBORNE-HOWES "I am struggling with this a bit because I can understand, from the developer's viewpoint that they would like to put this here because it is residential and they want to build something that looks residential, but the fact is that it is not a residential use, so I would just like to hear some other comments, unless everyone else is ready to vote."

WHEELER "I would just like to make a comment. I am a little concerned about this because I think we were pushing a little bit to allow the original zoning in this location, but I did feel that due to the uniqueness of the setting that things could be done in creating some buffer and protection. Initially, I wasn't too wild about this until I did a closer comparison and the amount of blacktop and parking and those issues that could occur with what we already have on it, to me this is probably less obtrusive. I think the aesthetics and the architectural design of that becomes very critical and I think there is a limited amount of control that we can put on that, but I think that if it is designed properly, and we have seen some good ones and some bad ones in this community."

FULP "Mr. Chair, I have another comment. We did not address the sewer hook-up issue, and in my opinion, I want the folks to hear this who asked that question, in my opinion, that is not our place. I am on my third assessment because I live out there, too. The sewer hook up cost and connections are the purview of the County Commissioners and not this body. I just want to let you know that we are not ignoring that.

And in terms of the aesthetic value of this proposed project, I think as it is proposed to be built, it would look as attractive as heaven on Greenwich Road."

VOTE ON THE MOTION:

The motion failed with 7 votes in opposition, (Wheeler, Frye, Johnson, Consolver, Hagggar, Miles and Warren) and 4 in favor (Platt, Lopez, Osborne-Howes, Fulp). Hentzen, Garofalo and McKay were not present.

MOTION: That we recommend to the governing body that the request be approved, subject to the following:

1. Development shall be limited to the following uses: single-family, duplex, day care (limited and general), automatic teller machine, medical services, and office (general), and a hotel for Lot 1 and Lot 2 only, limited to a maximum of 62 rooms or suites.
2. Development shall be limited to a maximum gross floor area of 80,000 square feet. (Approximately 21% of the 8.6 Acres).
3. All free-standing signs shall be monument-type signs with a maximum height of 20 feet.
4. Architectural Control:
 - A. All buildings on the property shall share the similar architectural character, color, texture, and the same predominate exterior building material. Building walls and roofs shall have predominantly earth-tone colors, with vivid colors limited to incidental accent. Development of a hotel on Lots 1 and 2 shall be in general conformance with the elevation drawings submitted and attached to this ordinance.
 - B. All parking lot light poles shall be of the same color and design, and shall have cut-off fixtures which direct light away from nearby residential areas. Light poles must be limited to a maximum height of 14 feet.
5. All buildings shall be limited to 35 feet in height with a maximum of 2 stories.
6. Minimum building setback from the center line of Central shall be 150 feet.
7. Access to Jackson shall be limited to one opening.

MILES moved, **FRYE** seconded the motion.

WHEELER "I have a question of staff. We have a motion to approve, and I am not one to advocate a whole lot of architectural controls, but in this situation, is there some additional dialog that we might be able to put in here to ensure that we don't end up with a vinyl sided barn with air conditioners hanging out the windows?"

KROUT "Well, we have said it is to be in substantial compliance with the elevations that are attached as an exhibit, so I think what you see is what you will get."

WHEELER "There are no material specifications on here, there is no color specification."

KROUT "I think you could go further because of the character of this area, but I think this building is pretty well designed. They probably have a pretty good idea of how they are going to deal with this."

MILES "Will you bring the applicant up?"

JOHNSON "Will the applicant please come forward?"

MILES "You basically heard the question. What do you think it is going to be built of?"

WILEY "It is a buff brick, as I recall, and the brick portions as shown, and then an earthtone siding. This is Mr. Greenstreet."

JOHN GREENSTREET "I am with Plaza Real Estate. The brick we have chosen is a similar brick that we have used at the Pinehurst Addition on the corner of Central and 143rd that we developed. It is the same Kingbridge brick in a queensize that will go on the unit, and also, our office building and it will flow through the 8.6 acres that is developed for the office and this use. It will be the same type roofs throughout. We are going to stay away from the wood roofs and go to either a 40 year composition or a tile roof, just for lower maintenance and better insurance coverage.

The earthtones that were requested as part of the Protective Overlay will flow through the whole entire area. As Gary mentioned, there are many, many, many large trees in the area, and we are trying to keep those as a buffer so when you look in there, you don't see 40 or 50 cars. The cars will be screened. The texture of the building will flow as the brick, the siding, the roof in contrast with the other four buildings in the area."

JOHNSON "Sir, what was the material of the siding "

GREENSTREET "We are looking at three different ones; what is called a hardy plank, which is a concrete 50 year life material; we are looking at some upgrades on vinyl. There are lots of new materials out there that are much, much better. We went down to the Homeshow and looked at some things that are just amazingly long-term, better type usage than what has been in the marketplace. So we are looking at a variety of different things, but the texture and whatever we do on one building will flow through the others."

MILES "Thank you."

WHEELER "Can I ask a quick question? You have shown substantial roof here. Can we interpret that the pitch on this roof, the main body of the roof, that that is what will occur?"

GREENSTREET "Absolutely."

KROUT "If the Commission wants to add some wording to the statement on architecture, I guess I would suggest that you could add to the elevation, some siding, but I would leave it. I think at that distance that you probably won't be able to tell the nature of the siding, but you could say siding and brick with earthtone colors and a shingle-style roof composition or tile."

MILES "If that is part of the staff report."

KROUT "I am suggesting that you could add that for specification in your motion."

MILES "Okay, I will add that."

JOHNSON "The maker of the motion adds that. Does the second agree?"

FRYE "Yes."

VOTE ON THE MOTION: The motion carried with 7 votes in favor (Consolver, Johnson, Haggard, Warren, Frye, Wheeler and Miles) and 4 in opposition (Lopez, Osborne-Howes, Fulp and Platt). McKay, Garofalo and Hentzen were not present.

KROUT "This now goes to the City Council. If you spoke, you will get a notice, but the City Council does not hold a hearing."

FULP "For you good folks, before you leave, I want you to know that I was not a member of this Commission in 1998 when the original rezoning occurred."

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6. **SCZ-0790** – Ritchie Corporation, Inc., c/o H. T. Ritchie (applicant/owner); Baughman company, P.A., Russ Ewy (agent) request zone change from "SF-20" Single-family residential, "LC", Limited Commercial, "GI" General Industrial and "LI" Limited Industrial to "GI" General Industrial and "LI" Limited Industrial, on property described as:

Beginning at the NW corner of the NW ¼ of Section 36, T-26-S, R-1-W of the 6th P.M., Sedgwick County, Kansas; thence south along the west line of said NW ¼, 1305 feet; thence east parallel with the north line of said NW ¼, 850 feet; thence north parallel with the west line of said NW ¼, 1305 feet to a point on the north line of said NW ¼; thence west 850 feet to beginning, except the west 60 feet thereof for road. Generally located east of West Street and south of 37th Street North extended.

DALE MILLER, planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: Ritchie Corporation owns an unplatted tract of land bounded by West Street, 37th Street North extended, the Wichita-Valley Center Floodway and 29th Street North extended. Over the years, this property has been zoned for "SF-20", Single-family Residential, "LC", Limited Commercial, "LI", Limited Commercial, "GI", General Industrial uses, as well as received approval of a Conditional Use for sand extraction. In recent years, an asphalt plant and related activities, rock crushing and sand extraction have occurred on this site. There are also material stockpiles on site. The existing asphalt plant has reached the end of its production effectiveness. The applicant would like to replace the existing plant with a newer asphalt plant which will have improved operating characteristics (reduced emissions), and which necessitates re-arrangement of the site layout, including the re-location of the rock crusher and asphalt plant.

Prior to 1996, asphalt and concrete batch plants were "permitted uses" in the "LI" district. With the adoption of the Unified Zoning Code in 1996, such uses now require Conditional Use permits, so the asphalt plant is currently, a legal use. However, County Code Enforcement has determined that, with the plants relocation further into the site, the plant site will have to meet current code.

To accomplish the re-configuration of the site, the applicant is requesting to rezone the north 855 feet of the application area from ? LC? and SF-20 to "LI", Limited Industrial, and the western 540 feet of the south 450 feet from "LI" to "GI", General Industrial zoning. The application area is 790 feet wide by 1,305 feet long. With a Conditional Use permit (to be heard June 10), the rock crusher could be

then be relocated to the north. With approval of the "GI" zoning on the south, the asphalt plant can be moved north and east. The applicant has installed a berm and evergreen landscaping along West Street.

Property to the north of the site is zoned "LC", Limited Commercial and "SF-20", Single-family Residential and is used for single-family residential and agricultural purposes. The Wichita-Valley Center Floodway. Ritchie Corporation owns the Limited Industrial zoned land to the south and uses it for their sand plant operations. Ritchie Corporation also owns the vacant Limited Commercial and "SF-20", Rural Residential zoned land located to the west. On land further west, a conditional use permit has been approved for a solid waste transfer station.

CASE HISTORY: In association with SCZ-0546, CU-278 approved sand extraction operations in 1985. SCZ-0546 approved "LI", Limited Industrial zoning. In 1993, SCZ-0657 approved "GI", General Industrial zoning for 80,000 square feet located 340 feet east of West Street and south of 37th Street extended.

ADJACENT ZONING AND LAND USE:

NORTH: "LC", Limited Commercial and "SF-20", Single-family Residential; residence, agriculture
SOUTH: "LI", Limited Industrial and CU-278 (sand extraction); asphalt plant and old sand pit
EAST: "SF-20", Single-family Residential; sand pit Wichita-Valley Center Floodway
WEST: "LC", Limited Commercial, SF-20, Single-family Residential and CU-91 (sand extraction), CU-512 (approved for solid waste transfer station); vacant and sand extraction.

PUBLIC SERVICES: West Street is a paved two-lane arterial roadway. County Public Works indicates the paving is thicker than normal due in part to the higher than usual volume of truck traffic due to the landfill being located further north of this application area. The application area has two access points to West Street. No public services (sewer or water) are available.

CONFORMANCE TO PLANS/POLICIES: Locational guidelines contained in the Comprehensive Plan indicates that industrial uses should be located near support services and be provided with good access to major arterials and as extensions of existing industrial uses. Traffic from such uses should not feed directly onto local streets in residential areas. Industrial areas should be generally located away from residential areas, and be sited so industrial traffic does not travel through less intensive land uses. With the application of a Protective Overlay, additional considerations include the characteristics of the intended uses, the surrounding uses and zoning districts and the degree to which the specific use would clash with adjacent uses. The land use map shows this as being agricultural. The commission has an unwritten policy of supporting the expansion or improvement of existing businesses. Industrial land use strategies include a recommendation that expansions of existing industrial area in rural area is should be expanded where appropriate.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following Protective Overlay conditions:

- A. The site is to be platted within one year and the application area shall be restricted to uses permitted in the "LI", Limited Industrial district and uses associated with the production of asphalt and concrete products.
- B. The applicant shall maintain the berm and landscape plantings of evergreens that exist along West Street. A 100 foot setback prohibiting buildings, parking, loading, outdoor work or storage areas shall be maintained along the north property line so long as the property at the northeast corner of 37th Street North extended is used for residential purposes.
- C. The asphalt plant and concrete plant shall meet the permitting, reporting and operating requirements of the Kansas Air Pollution Control Regulations. The applicant shall obtain all applicable county, state and federal permits prior to commencing any asphalt or concrete activities on this site.
- D. The drive entrances and all internal traffic roadways to and from the asphalt plant concrete plant as well as the off--street parking and delivery truck parking areas, shall be paved with either asphalt or concrete. Water, or other dust retardant, shall be used as needed to effectively control blowing dust from stockpiled materials and from all other internal traffic roadways.
- E. The opacity of the dust from any on-site facility or operation must not exceed 15% opacity, and emissions of dust from transfer points, i.e. elevators, belts, etc. must not exceed 10% opacity as determined by the Wichita-Sedgwick County Department of Community Health, Air Quality Control staff.
- F. Stockpiles of raw and finished materials shall not exceed 45 feet in height.
- G. Any on-site storage of fuels or chemicals must be approved by the Wichita-Sedgwick County Health Department.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: There is a mix of zoning in the area – "LC", Limited Commercial, "LI", Limited Industrial, "SF-20", Single-family Residential and Conditional Use permits that allow sand extraction and a solid waste transfer station.

2. The suitability of the subject property for the uses to which it has been restricted: The site could continued to be used for its approved uses. However, the applicant indicates that he needs the additional zoning in order to install an improved plant. The new plant should operate more efficiently with improved operating characteristics.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently being used for the same purpose as is being requested with this application. This request is necessary in part due to a change in 1996 Unified Zoning Code - changing asphalt plants from a use by right in "LI" to a Conditional Use in "LI". The original Conditional Use permit for the rock crusher does not cover the area where the applicant now needs the crusher to be located, so the requested "LI" zoning on the north is required to enable the applicant to request a Conditional Use for the rock crusher. The net result of this request, if approved, will be the expansion "LI" zoning in place of "LC" and "SF-20" zoning and increased "GI" zoning in place of "LI" zoning. The Protective Overlay prevents uses not associated with asphalt or concrete production without additional hearings.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The request is consistent with the commission's unwritten policy of supporting the expansion of existing businesses and the facility is located within one-half mile of K-96 Highway. This use is highly dependent on good truck access to major traffic routes. This site provides that and is at the same time is not in a developed setting where truck traffic will impact a significant number of adjoining property owners.
6. Impact of the proposed development on community facilities: West Street has already been improved to account for truck traffic. No public sewer or water services are available in this area.

MILLER "This is associated with CU-525, a conditional use, and was originally going to be part of this application, but you will hear that portion of it at the June 10 meeting. One issue that may be of question between staff and the applicant is that we are requesting for the site to be platted within one year. I think the rest of the conditions are acceptable to the applicant. Are there any questions of staff?"

JOHNSON "Thank you. Applicant or agent."

RUSS EWY, "I am with the Baughman Company, agent for the applicant. As Dale mentioned, we are looking to replace an existing 15 year old asphalt plant operation that has been on this site since 1985. Basically, the life of that plant is due and we are looking to replace that asphalt plant with one that will benefit not only Ritchie Paving Incorporated, but also the surrounding property owners. In that this new plant will reduce the amount of dust, noise, and fumes that are typically generated by older plants. This will be able to recycle more material. It will be a more efficient operation for Ritchie Paving.

Since we are replacing this structure, we would be permitted, typically, as a legal use, to rebuild; however, this, as Dale mentioned, this asphalt plant will be slightly relocated, and after conferring with Glen Wiltse of the Sedgwick County Code Enforcement, as well as the County Counsellor's office, we will be asked to go through this zone change and bring this site into conformance with today's Unified Zoning Code.

One other issue is that we would also like to begin to reclaim property that had, at one point, been water, which is slowly being reclaimed and filled. The reason why we are rezoning the northern portion of this site is to reclaim that land for use for the entire operation. What I handed out to you prior to the meeting is hopefully a better visual indication of how we are going to relocate this asphalt plant. What you can see, basically here, is the existing asphalt plant operation. What is shaded in dark is the new asphalt plant's relocation, approximately 50 to 70 feet further into the site to the northeast. As you can also see, the sand extration operation is adjacent to the south, stockpiles of materials occur on the site, and as Dale also mentioned, we unfortunately weren't able to bring as associated Conditional Use request here before you today, so we will be back here next time to discuss that issue. But the site will also accommodate a rock crusher.

We are in agreement with staff comments on the recommended Protective Overlay. We are, however, to avoid the condition of platting the property. As we all know, that is a very standard condition of zone change to plat the property within one year. I am sure that that condition is valid for quite a number of reasons for a large percentage of all zone changes. We have discussed this issue with Glen Wiltse of the County Code Enforcement to determine whether or not our proposed redevelopment of this site would require building permits. It has been he, as well as the County Counsellor's office's determination that platting would not be required, that under the Subdivision regulations, we would be exempt from being required to be on a platted lot.

Throughout the course of this property's history, additional right-of-way has been granted on the east side of West Street. West Street currently has 60 feet of half-street right-of-way along the Ritchie property, and we would be unable to come up with an idea of what else would benefit the public at large through replatting. Naturally, this site is Ritchie's main site in the County. It is going to be operating in a very similar fashion as it has over the past 15 years, and will continue to do so for quite some time in the future. Naturally, if this site were ever to be disbanded and redeveloped for any other type of use, we would understand that at that time we would have to replat in order to provide the easements and lots and various other issues addressed at that time. With that, Tom Ritchie is here in attendance today, so if you have any technical questions about the specifics of the upgrade of the asphalt plant, you can address those to him; otherwise, I will entertain any questions you may have."

MILES "I happened to walk in with Tom, and I asked a question that has been asked of me many times and I have asked plenty of times. This filling area that we are asking for today, I would like for them to put a footage on that how far out that is going to be and that

eliminates a lot of people asking a lot of questions. I know that Tom has had that question asked of him many times, too."

TOM RITCHIE "I am with Ritchie Paving. Harley, are you asking the footage to the east?"

MILES "Yes. Going from West Street out into the lake where you are going to fill up there on the north end. Do you have a reasonable idea how far you are going to fill out there?"

RITCHIE "Yes, it would be approximately where the red line is. Let me make a point. When we first applied for the zoning, or permission, or whatever the proper term was, the size of the zoning that you saw on the original map was limited because we were right at the edge of the lake, and we have filled in the lake, as we said we would at the time, over the course of the years, and we have a lot more acreage available now, and this is going to be our main facility. We don't plan to go out and fill over to the Big Ditch. We think that lakes are valuable amenities, and we would like to make sure we have some left when we are finished. These are long-term facilities. Russ did not mention that we do own the property immediately to the west, and then another 100 acres immediately west of that; 160 acres south of the property immediately to the west. We own the corner across 37th Street where the transfer station is going to be, and another 160 acres south of the City owned property on the west side of West Street. There is a dimension somewhere, and I think it is 900 feet off of West Street, plus or minus 50 feet."

MILES "Approximately 900 feet then?"

RITCHIE "That is a good, educated guess."

MILES "Well, when the question is asked, that gives somebody an idea of the answer."

RITCHIE "Yeah. We have basically filled as far east as we are going to fill, except you can see that we have a diagonal line, so we haven't made our way all the way across."

JOHNSON "Are there any other questions? Marvin, did you have something you wanted to say?"

KROUT "I don't know if there are other speakers here, but this will give the applicants a chance to rebut. I believe strongly that this property should be platted. You get grading and drainage plans and that is how you set where those things will happen. This is property that is adjoining the Big Ditch, and maybe some of it does need to be left in ponding areas. It is also an area like, when you set for BFI, they are not going to be a public owner of sewer, but they are required to provide guarantees for future public surfaces, and I think this area will be an area that is going to get public services at some point in the future. There should be access controls on West Street. I understand that the applicants may not need to plat the property in order to place the new asphalt plant because that is considered equipment and not a building, but I just think it is good planning to plat property that you are zoning acreage for industrial land, especially in a sensitive area like this."

JOHNSON "Are there any other questions? Thank you."

RITCHIE "May I make a comment?"

JOHNSON "Yes."

RITCHIE "Like all things, this is the cost of doing business. What we are doing is filing a plat on what is now a lake. It will be quite a while before it is usable for any other use except filling in of the lake and our use. It seems to me to be somewhat of a hardship to have to bear the expense at this time for something that is going to be needed in 15 or 20 years, and that is literally about the life span of this deal. That is just how I feel about it. We are willing to do whatever is the right thing to do, but it does cost money, it is an expense, and we are in a commodity business, we have to be low bidder. Every little thing you pile on makes it harder to do that."

JOHNSON "Are there any other questions? Thank you. Is there anyone else here to speak in favor of this? Is there anyone here to speak in opposition? Seeing none, I will bring this back to the Commission."

MOTION: Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff recommendations (The zoning, uses and character of the neighborhood: There is a mix of zoning in the area – "LC", Limited Commercial, "LI", Limited Industrial, "SF-20", Single-family Residential and Conditional Use permits that allow sand extraction and a solid waste transfer station. The suitability of the subject property for the uses to which it has been restricted: The site could continued to be used for its approved uses. However, the applicant indicates that he needs the additional zoning in order to install an improved plant. The new plant should operate more efficiently with improved operating characteristics. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently being used for the same purpose as is being requested with this application. This request is necessary in part due to a change in 1996 Unified Zoning Code - changing asphalt plants from a use by right in "LI" to a Conditional Use in "LI". The original Conditional Use permit for the rock crusher does not cover the area where the applicant now needs the crusher to be located, so the requested "LI" zoning on the north is required to enable the applicant to request a Conditional Use for

the rock crusher. The net result of this request, if approved, will be the expansion "LI" zoning in place of "LC" and "SF-20" zoning and increased "GI" zoning in place of "LI" zoning. The Protective Overlay prevents uses not associated with asphalt or concrete production without additional hearings. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The request is consistent with the commission's unwritten policy of supporting the expansion of existing businesses and the facility is located within one-half mile of K-96 Highway. This use is highly dependent on good truck access to major traffic routes. This site provides that and is at the same time is not in a developed setting where truck traffic will impact a significant number of adjoining property owners. Impact of the proposed development on community facilities: West Street has already been improved to account for truck traffic. No public sewer or water services are available in this area.) I move that we recommend to the governing body that the request be approved, subject to the following:

- A. The site is to be platted within one year and the application area shall be restricted to uses permitted in the "LI", Limited Industrial district and uses associated with the production of asphalt and concrete products.
- B. The applicant shall maintain the berm and landscape plantings of evergreens that exist along West Street. A 100 foot setback prohibiting buildings, parking, loading, outdoor work or storage areas shall be maintained along the north property line so long as the property at the northeast corner of 37th Street North extended is used for residential purposes.
- C. The asphalt plant and concrete plant shall meet the permitting, reporting and operating requirements of the Kansas Air Pollution Control Regulations. The applicant shall obtain all applicable county, state and federal permits prior to commencing any asphalt or concrete activities on this site.
- D. The drive entrances and all internal traffic roadways to and from the asphalt plant concrete plant as well as the off--street parking and delivery truck parking areas, shall be paved with either asphalt or concrete. Water, or other dust retardant, shall be used as needed to effectively control blowing dust from stockpiled materials and from all other internal traffic roadways.
- E. The opacity of the dust from any on-site facility or operation must not exceed 15% opacity, and emissions of dust from transfer points, i.e. elevators, belts, etc. must not exceed 10% opacity as determined by the Wichita-Sedgwick County Department of Community Health, Air Quality Control staff.
- F. Stockpiles of raw and finished materials shall not exceed 45 feet in height.
- G. Any on-site storage of fuels or chemicals must be approved by the Wichita-Sedgwick County Health Department.

FULP moved, **LOPEZ** seconded the motion.

JOHNSON "There is a motion to approve subject to staff comments, including the platting. Is there any discussion?"

MILES "Marvin, isn't this a Conditional Use on this property here?"

KROUT "There is a Conditional Use. Is it on all or part of the property?"

MILLER "On all of it, the original one. It covers a lot of ground."

MILES "Okay. And there was a preliminary plat, isn't that right, on most of these sandpits? Well, there is not one on this one."

MILLER "It is unplatted."

KROUT "I don't think that there is a re-development plan or any conditions on the limitation of the sandpit."

EWY "Not that I was able to find in researching this."

KROUT "Sometimes we see a redevelopment plan that says how they are going to restore it or fill it."

MILES "Maybe this was before."

KROUT "Yeah, this was."

MILES "I hate to see them have to plat, but I am in favor of the motion other than that. That is up to you."

WHEELER "I just have a quick question of Marvin. Is there any merit in giving them, say, platting within 5 years versus within 1 year? In this type of operation, they are obviously not going to fill that in a real quick period of time, I would assume. Is there a reason to have it done just right of way?"

KROUT "Well, I think it would be a good idea to establish where the fill-in is going to stop and start. Five years is a long time. You have extended it sometimes to a two year period. You could extend it to two years."

WHEELER "Typically on new facilities of this type, would we require platting?"

KROUT "Yes. I think if someone came in and said I want Industrial zoning, whether it was for an asphalt plant or not, I think we would probably say that the property ought to be platted. I can't recall the last time we had one of these."

WARREN "Generally, on a open piece of ground like this, and particularly where the use is there, and the use isn't changing essentially, we would be asking for a plat, Marvin, only if we were looking for some things that we wanted, right-of-ways, easements, things of that nature. I don't see that that exists out here. I am for the motion, except I would like to, as Commissioner Miles said, I would like to delete that condition. I think it is imposing something on them that is of no benefit, either to government or to themselves. I don't see anything to be benefitted from it."

KROUT "I guess I did mention before, and maybe you missed it before, Commissioners, but I think that this is a sensitive area that deserves to have a plan filed for grading and drainage that is approved by the County Engineer, which is an oral part of platting, and I also believe that obtaining a guarantee for future services that this property will participate in, if water and sewer are provided to this area, and I believe they will be, before the operation of this plant, as it was described, is going to be over. I think just like you required it for BFI, it is appropriate for this property to participate in those improvements."

WARREN "Could we not get that by some document other than platting? I am sure that they would agree to conditional sign-ups if utilities were available. I don't know that platting would be the only vehicle by which we could use to document that."

KROUT "I guess you could make this part of the Protective Overlay. You could require that a grading and drainage plan be submitted to the Director of County Public Works for approval, and also that guarantees be submitted to the City of Wichita for public services. You could require those as Protective Overlay conditions rather than requiring the platting."

MILES "Marvin, this has a Conditional Use on the whole property, if I am not mistaken. Am I right?"

KROUT "For a sandpit."

MILES "Right. And the Conditional Use permit as a sandpit operation, you have to retain all of your drainage on the property. Am I not right?"

KROUT "Only if that was in the conditions, and I doubt that that was in these conditions."

MILES "All right then, could we make that in the conditions of this that all of the drainage retains on that property and have an Overlay?"

KROUT "I would rather just say that a plan be submitted top the County Public Works Director for review and he could decide how the drainage ought to work."

SUBSTITUTE MOTION: That the request be approved, and that a drainage plan be submitted, and a guarantee be given for public services.

MILES moved, **WARREN** seconded the motion.

OSBORNE-HOWES "Can we still say something about, or would we need to, about replatting prior to the end of its natural life or something."

KROUT "Well, looking that long into the future, you may as well wait for the first building permit to come in and then that would trigger the platting at that time."

FULP "Marvin, is this, what we are doing, kind of like having a covenant here?"

KROUT "Some people describe the idea of a Protective Overlay as similar to a restrictive covenant. It is similar, but all Protective Overlays are similar."

VOTE ON THE MOTION: The motion carried with 10 votes in favor (Consolver, Osborne-Howes, Johnson, Haggar, Warren, Frye, Wheeler Fulp, Platt, and Miles). There was no opposition. Garofalo abstained.

Consolver left at 3:40 p.m.

7. Discussion items requested by Commissioner Haggar

KROUT "Commissioner Haggar called as we were putting together the agenda, and asked for the three items that are identified on Item 7 to be placed on the agenda for discussion."

JOHNSON "Commissioner Haggar, the floor is yours."

HAGGAR "Let me tell you why I am even putting this in here. Basically, at this stage of the game, if we really have a full committee like we have on this committee doing long-range planning, this item should be really discussed then, but since we really don't meet as frequently as we meet here, and since my time is about to expire on this Commission, what I really want to do is kind of inform you as to what I have done in the last year. Since April of 1998 until now in terms of what I told the long-range planning, that I intend to go out to the public and follow on with the Stakeholders' meetings that I have basically chaired on transportation, economic development and on and on. So what this is really is information for this body and what I want you to know is that I have gone out on my own and briefed those who wanted to listen from the civic, from the politicians, and from the media; whoever wanted to listen, on the Stakeholder's meetings, which is economic development, transportation, tourism, utilities, a lot of these major items."

Another item that is really kind of a problem for me as long as I have been on this Planning Commission is the private/public interface when it comes to doing business, whether it is the Planning Commission, the governing body, or what have you. It was those items that I put on the table. What I want you to know is that I am so optimistic and I am so happy that I got so many...I don't think I had any opposition on the idea of long-range planning. I didn't have any opposition in terms of the big items needing to be put on the table. We need to be inclusive, we need to be reaching out.

The only thing that comes out of this is all of these things are nice to do, good to do, and there was never a disagreement, or at least a light for me is all we intend to do in the future. One thing so far that has happened out of this is working one on one with the City Council and working one on one on the County Commission, which I thought was very, very important for me to meet them one on one, spent at least an hour to an hour and a half with each individual. That is a long time talking. Along with the civic groups, you could see the Mayor start putting some task forces together. Transportation was so major, so he picked the air service out of it, and he has something going. On utilities, he has something else going. Sixty per cent of the County Commissioners, and I have talked to three of them so far, they have something on their plate that they want to do. So this has kind of been a turn-around in terms of long-range planning, and that is really what we wanted to do, and we are not sure where we are going to do it. So things started popping all over the place.

What I really want you to know is that I don't know what the future Planning Commission is going to do and what it is not going to do, but the idea of long-range planning, organization, finding the right people to do this, and the time and the budget. I think it all looks real good. I don't really know how it is going to come out, but what I did, and for those of you who are going to stay on this Planning Commission, if you ever need help from me, I would be glad to help. But what I did was to promise the governing body, including the school board, the legislators, the congressional delegation that anything that they need in terms of long-range planning that I could either arrange, facilitate, or work with the public on, I would be glad to do that.

A lot of positive things are happening, and I want you to know about them. These are only three items only out of 20, and the reason I am mentioning these things is that it would be nice for the Planning Commission to maybe start these. It would be nice for maybe the Planning Commission to be part of this. It would be nice for the Planning Commission to know that there are a lot of people who would like to hear about this thing. So I wanted to just let you know. I am going to complete my report. I still have meetings until the end of July. There are almost 85 more requests, so I am going to be awfully busy, but I will be glad to share with you a little more, under a different setting.

What I tentatively plan to do is on June 17, I am going to ask some of the staff, and staff isn't just Marvin Krout, there is Chris Cherches, and we are going to putting some skeleton to what I am really telling you about, and if you are really interested and you want to get some information and you want to be a part of this, just let me know. We can maybe put some of this stuff together and we can just go forward. Exactly what I am going to do with that, I don't know. If you want to participate, it would be great. If you don't want to participate, somebody else is going to do it. There are some things happening, and I am very positive about it. I am just going to leave it to any discussion, for any questions whatsoever."

JOHNSON "Are there any questions?"

MOTION: That the item be received and filed.

FULP moved, **FRYE** seconded the motion, and it carried unanimously.

JOHNSON "Is there any other business? Commissioner Warren, didn't you hand something out?"

WARREN "Yes. This is an article that was recently published in Nation's Building News. It had to do with the questions we have had on zoning. I thought it might be interesting. You can take a better look at it later."

MOTION: That the meeting be adjourned at 3:55 p.m.

FULP moved, **FRYE** seconded the motion, and it carried unanimously.

State of Kansas)
Sedgwick County) ^{ss}

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 1999.